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## **TRANSCRIPT OF RECORD**

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**Supreme Court of the United States**

**OCTOBER TERM, 1941**

**No. 348**

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**THE SEMINOLE NATION, PETITIONER,**

**vs.**

**THE UNITED STATES.**

---

**ON WRIT OF CERTIORARI TO THE COURT OF CLAIMS.**

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**PETITION FOR CERTIORARI FILED AUGUST 5, 1941.**

**CERTIORARI GRANTED OCTOBER 13, 1941.**

# SUPREME COURT OF THE UNITED STATES

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[fol. 1]

**IN COURT OF CLAIMS OF THE UNITED STATES**

No. L-51

**THE SEMINOLE NATION,**

vs.

**THE UNITED STATES**

**I. HISTORY OF PROCEEDINGS**

The original petition was filed February 24, 1930.

On April 5, 1930, a general traverse was filed by the defendant to the original petition.

On September 19, 1934, on motion made therefor, and allowed by the court, the plaintiff filed its amended petition.

On June 4, 1935, the case was submitted to the court on merits without argument.

On December 2, 1935, the court filed findings of fact and conclusion of law, judgment for plaintiff in the sum of \$1,317,087.27, with opinion by Williams, J.

On January 18, 1936, the defendant filed a motion for an extension of time within which to file a motion for a new trial, which was allowed by the court on January 21, 1936.

On February 6, 1936, the defendant filed its motion for a new trial.

On March 2, 1936, the court filed an Order overruling defendant's motion for a new trial.

[fol. 2] On May 13, 1936, the defendant filed a motion for leave to file a second motion for a new trial, which was allowed by the court on May 18, 1936.

On May 18, 1936, the defendant's second motion for a new trial was filed, and was placed on the June Law Calendar by the court for argument.

On June 1, 1936, the defendant's second motion for a new trial was argued and submitted.

On June 8, 1936, the court filed an order overruling defendant's second motion for a new trial.

On June 23, 1936, the defendant filed a request for record in re certiorari.

On July 3, 1936, the record in re certiorari was delivered to the defendant.

On October 16, 1936, the Order of the U. S. Supreme Court granting certiorari was filed, in this office.

On February 10, 1937, the Mandate of the U. S. Supreme Court reversing the judgment of this court, and remanding the case for further proceedings was filed in this court.

On March 20, 1937, the plaintiff filed a motion for judgment pursuant to the Mandate of the U. S. Supreme Court.

On May 3, 1937, the court filed an Order entering judgment for plaintiff in the sum of \$10,099.25.

On May 7, 1937, the attested transcript of judgment was delivered to Paul M. Niebell, the attorney of record.

[fol. 3] On September 8, 1937, the plaintiff filed a motion to reinstate case under the Act of August 16, 1937, which motion was allowed by the court on September 30, 1937.

On October 25, 1937, the plaintiff filed a motion for leave to file a second amended petition, which was allowed on November 8, 1937, and second amended petition was filed.

On December 6, 1937, the plaintiff was paid \$10,099.25, by Treasury Warrant No. 576, to satisfy judgment of May 3, 1937.

## II. SECOND AMENDED PETITION

(Original Petition Filed Feb. 24, 1930)

(Amended Petition Filed Sept. 19, 1934)

(Second Amended Petition Filed Nov. 8, 1937)

To the Honorable the Court of Claims:

The plaintiff, the Seminole Nation, respectfully represents:

### I

That by a certain act of Congress, approved May 20th, 1924 (43 Stat. 133, as modified by Joint Resolution approved May 19, 1926; 44 Stat. 568, giving permission to file separate petitions, and Joint Resolution of February 19, 1929, 45 Stat. [fol. 4] 1229, extending the time for filing suits until June 30, 1930, and by a certain act of Congress, approved August 16, 1937, Public No. 296, 75th Congress, 1st Session, Chapter 651, permitting amended petitions to be filed prior to January 1, 1938, and reinstating this case), plaintiff was



authorized and empowered to bring and maintain this action.

## II

That at all times mentioned herein, and for many years prior thereto, the Seminole Nation was the owner of large trust funds, which represented the consideration given by the United States for the cession of certain of its lands, which said trust funds were held in trust by the defendant for the use and benefit of plaintiff; and that there existed various treaties and agreements between said plaintiff and defendant; and certain acts of Congress, whereby said trust funds were to be managed and invested by defendant for the benefit of plaintiff, which said treaties, agreements, and statutes are hereinafter more specifically referred to.

## III

That the Seminole Treaty of August 7th, 1856 (11 Stat. 699), provided in part as follows:

"Article 8. In consideration of such release, discharge, and obligation, . . . the United States do therefore agree and stipulate as follows, viz.: To pay to the Seminoles now in the west, . . . to provide annually for ten years [fol. 54] the sum of three thousand dollars for the support of schools; two thousand dollars for agricultural assistance; and two thousand two hundred dollars for the support of smiths and smith-shops among them, said sums to be applied to these objects in such manner as the President shall direct."

"Article 9. The United States agree to . . . expend for them in improvements, after they shall all remove, the sum of twenty thousand dollars."

That under said Articles 8 and 9, the total obligation of the United States to the Seminole Nation was \$92,000.00. That notwithstanding said definite treaty obligation the defendant, in violation thereof, either illegally disbursed, or failed and neglected to disburse and thus retained, wholly or in part, the amounts annually appropriated by Congress for the purpose of fulfilling said treaty obligation; therefore, all of said \$92,000.00 was not disbursed for the benefit of plaintiff, in accordance with the terms of said treaty, and

defendant is now liable to plaintiff for the balance due thereunder in the amount of, to-wit, \$63,353.42.

#### IV

That Article 8 of said Treaty of August 7th, 1856, 11 Stat. 699, provided further in part as follows:

[fol. 6] " \* \* \* the United States do therefore agree and stipulate as follows, viz: \* \* \* Also to invest for them the sum of two hundred and fifty thousand dollars, at five per cent per annum, the interest to be regularly paid over to them per capita as annuity; the further sum of two hundred and fifty thousand dollars shall be invested in like manner whenever the Seminoles now remaining in Florida shall have emigrated and joined their brethren in the west, whereupon the two sums so invested shall constitute a fund belonging to the united tribe of Seminoles, and the interest on which, at the rate aforesaid, shall be annually paid over to them per capita as an annuity; but no portion of the principal thus invested, or the interest thereon annually due and payable, shall ever be taken to pay claims or demands against said Indians, except such as may hereafter arise under the intercourse laws."

That notwithstanding the plain obligation of the United States to pay interest on said funds at the rate of five per centum per annum under the terms of said treaty, the defendant, in violation thereof, either illegally disbursed, or failed and neglected to disburse and thus retained, wholly or in part, the amounts annually appropriated by Congress for the purpose of fulfilling said treaty obligation; therefore, said interest was not disbursed in accordance with the [fol. 7] terms of said treaty, and defendant is now liable to plaintiff for the amount of said unpaid interest, amounting to \$154,551.28.

#### V

That Article 3 of the Seminole Treaty of March 21st, 1866, 14 Stat. 755, provided in part as follows:

" \* \* \* The balance due the Seminole Nation after making said deduction, amounting to one hundred thousand dollars, the United States agree to pay in the following manner, to-wit: \* \* \* seventy thousand dollars to remain in the United States Treasury, upon which the United

States shall pay an annual interest of five per cent; fifty thousand of said sum of seventy thousand dollars shall be a permanent school fund, the interest of which shall be paid annually and appropriated to the support of schools:

That although said treaty provision continued in full force and effect until the close of the fiscal year 1909 (see the Act of March 3, 1909, 35 Stat. 781, capitalizing said \$50,000.00 fund), yet the defendant, in violation thereof, either illegally disbursed, or failed and neglected to disburse and thus retained, wholly or in part, the amounts annually appropriated by Congress for the purpose of fulfilling said treaty obligation; therefore, said interest was not disbursed [fol. 8] in accordance with the terms of said treaty, and defendant is now liable to plaintiff for the balance due thereunder in the amount of, to-wit, \$90,597.20.

## VI

That Article 6 of the Treaty of March 21, 1866, 14 Stat. 755, provided as follows:

"Inasmuch as there are no agency buildings upon the new Seminole reservation, it is therefore further agreed that the United States shall cause to be constructed, at an expense not exceeding ten thousand (\$10,000) dollars, suitable agency buildings, the site whereof shall be selected by the agent of said tribe, under the direction of the superintendent of Indian affairs; in consideration whereof, the Seminole Nation hereby relinquish and cede forever to the United States one section of their lands upon which said agency buildings shall be directed (erected), which land shall revert to said nation when no longer used by the United States, upon said nation paying a fair value for said buildings at the time vacated."

That although said amount of \$10,000 was twice appropriated by Congress for the fulfillment of said Article 6, yet the defendant, in violation of said treaty provision, either illegally disbursed, or failed and neglected to disburse and thus retained, said \$10,000.00, and did not erect said agency buildings in accordance with the terms of said [fol. 9] treaty; therefore, the defendant is now liable to plaintiff for the said amount of \$10,000.00 under said treaty obligation.

## VII

That by the Acts of Congress, approved April 15, 1874 (18 Stat. 29), and March 2, 1889 (25 Stat. 980, 1004), certain Seminole tribal income, due from the United States to the Seminole Nation, was authorized to be paid into the Seminole tribal treasury, and the disbursement thereof was entrusted to the Seminole tribal officials.

That since the passage of said Act of April 15, 1874, it was reported by the officers of defendant that the Seminole tribal officials were misappropriating the Seminole tribal funds entrusted to them, and robbing the members of the tribe of an equal share of the tribal income (Exh. 306-348, 555-576, 670-680). That the reports of the Dawes Commission show conclusively that the governments of the Five Civilized Tribes were notoriously and incurably corrupt, that every branch of the service was infested with favoritism, graft and crookedness, and that by such methods the tribal officers acquired large fortunes, while the other members entitled to share in the tribal income received little benefit therefrom.

That in order to correct such conditions existing within the governments of the Five Civilized Tribes, and to insure the proper disbursement of the tribal income, Congress [fol. 10] passed what is known as the Curtis Act, approved June 28, 1898, 30 Stat. 495, under the terms of which defendant was directed to impound all of the funds of plaintiff, and assume full administrative control over the disbursement of same.

That Section 19 of said Act of June 28, 1898, provided as follows:

"Sec. 19. That no payment of any moneys on any account whatever shall hereafter be made by the United States to any of the tribal governments or to any officer thereof for disbursement, but payments of all sums to members of said tribes shall be made under direction of the Secretary of the Interior by an officer appointed by him; and per capita payments shall be made direct to each individual in lawful money of the United States, and the same shall not be liable to the payment of any previously contracted obligation."



That said Section 19 remained in full force and effect as to the Seminole Nation during the fiscal years from 1899 to 1907, both inclusive; that notwithstanding the plain inhibition in said section that no payments thereafter should be made to "the tribal governments or to any officer thereof for disbursement," and over the protest of a large number of Seminoles, yet in disregard thereof and in violation of said Section 19 the defendant, during said period, illegally [fol. 11] paid over to the Seminole tribal treasurer large amounts of Seminole tribal income, in the sums of, and derived from the following sources:

Treaty of August 7, 1856 Funds	\$212,500.00
Treaty of March 21, 1866 Funds	29,750.00
Act of March 2, 1889 Funds	622,156.87
Indian Moneys, Proceeds of Labor Fund	295.71
Total	864,702.58

Therefore, the defendant is liable to plaintiff in the amount of \$864,702.58 thus illegally disbursed in violation of said Section 19 of said Act of June 28, 1898.

Wherefore, plaintiff prays that judgment be entered against defendant for the total amounts due plaintiff under said unfulfilled treaty obligations of defendant, and for the total amounts of Seminole tribal funds illegally disbursed by defendant in violation of said Section 19 of the Curtis Act, together with interest on same at five per cent per annum; and that plaintiff may have such other and further relief as to the court may seem just and proper.

The Seminole Nation, By Paul M. Niebell, Its Attorney of Record.

Of Counsel: W. W. Pryor, (E. J. Van Court, Deceased), District of Columbia.

[fol. 12] Personally appeared before me, a notary public in and for said District of Columbia, Paul M. Niebell, who being by me first duly sworn, deposes and says: That he is one of the attorneys for plaintiff; that his authority to so represent plaintiff is filed with case No. L-51 in this court; that he is authorized under an act of Congress approved May 20, 1924 (43 Stat. 133), to make verification of the above and foregoing second amended petition; that he has read said petition, and knows the contents thereof; that the mat-

ters and things therein alleged are true to the best of his knowledge, information and belief.

Paul M. Niebell.

Subscribed and sworn to before me this 21st day of October, 1937. Lewis R. Watson, Notary Public, D. C. My Commission Expires Sept. 1, 1941. (Seal.)

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[fols. 13-14] **III. GENERAL TRAVERSE TO SECOND AMENDED PETITION—Filed December 16, 1937**

And now comes the Attorney General, on behalf of the United States, and answering the second amended petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the second amended petition be dismissed.

Carl McFarland, Assistant Attorney General. G. T. S., R. T. N.

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**IV. ARGUMENT AND SUBMISSION OF CASE**

On October 3, 1939, the case was argued and submitted on merits by Mr. Paul M. Niebell for plaintiff, and by Mr. Wilfred Hearn for defendant.

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[fol. 15] **V. Special Findings of Fact, Conclusion of Law and Opinion of the Court by Whitaker, J.—Filed January 6, 1941**

Mr. Paul M. Niebell for the plaintiff. Mr. W. W. Pryor was on the brief.

Mr. Wilfred Hearn, with whom was Mr. Assistant Attorney General Norman M. Littell, for the defendant. Mr. Raymond T. Nagle was on the brief.

This case having been heard by the Court of Claims, the Court, upon the evidence adduced, makes the following

**SPECIAL FINDINGS OF FACT**

1. By an act of Congress approved May 20, 1924 (43 Stat. 133), it is provided:

That jurisdiction be, and is hereby, conferred upon the Court of Claims, notwithstanding the lapse of time or stat-

utes of limitation, to hear, examine, and adjudicate and render judgment in any and all legal and equitable claims arising under or growing out of any treaty or agreement between the United States and the Seminole Indian Nation or Tribe, or arising under or growing out of any act of Congress in relation to Indian Affairs, which said Seminole Nation or Tribe may have against the United States, which claims have not heretofore been determined and adjudicated on their merits by the Court of Claims or the Supreme Court of the United States.

Sec. 2. Any and all claims against the United States within the purview of this act shall be forever barred unless suit be instituted or petition filed as herein provided in the Court of Claims within five years from the date of approval of this act, and such suit shall make the Seminole Nation party plaintiff and the United States party defendant. The [fol. 16] petition shall be verified by the attorney or attorneys employed to prosecute such claim or claims under contract with the Seminoles approved by the Commissioner of Indian Affairs and the Secretary of the Interior; and said contract shall be executed in their behalf by a committee chosen by them under the direction and approval of the Commissioner of Indian Affairs and the Secretary of the Interior. Official letters, papers, documents, and records, or certified copies thereof, may be used in evidence, and the departments of the Government shall give access to the attorney or attorneys of said Indian nation to such treaties, papers, correspondence, or records as may be needed by the attorney or attorneys of said Indian nation.

Sec. 3. In said suit the court shall also hear, examine, consider, and adjudicate any claims which the United States may have against said Indian nation, but any payment which may have been made by the United States upon any claim against the United States shall not operate as an estoppel, but may be pleaded as an offset in such suit.

Sec. 4. That from the decision of the Court of Claims in any suit prosecuted under the authority of this act, an appeal may be taken by either party as in other cases to the Supreme Court of the United States.

Sec. 5. That upon the final determination of any suit instituted under this act, the Court of Claims shall decree such amount or amounts as it may find reasonable to be paid the

attorney or attorneys so employed by said Indian nation for the services and expenses of said attorneys rendered or incurred prior or subsequent to the date of approval of this act: Provided, That in no case shall the aggregate amounts decreed by said Court of Claims for fees be in excess of the amount or amounts stipulated in the contract of employment, or in excess of a sum equal to 10 per centum of the amount of recovery against the United States.

Sec. 6. The Court of Claims shall have full authority by proper orders and process to bring in and make parties to such suit any or all persons deemed by it necessary or proper to the final determination of the matters in controversy.

Sec. 7. A copy of the petition shall, in such case, be served upon the Attorney General of the United States, and he, or some attorney from the Department of Justice to be designated by him, is hereby directed to appear and defend the interests of the United States in such case.

[fol. 17] This act was modified by joint resolution of May 19, 1926 (44 Stat. 568); permitting plaintiff to bring separate suits on one or more causes of action, and by the act of Congress approved February 19, 1929 (45 Stat. 1229) the time for filing such suits was extended to June 30, 1930.

Under the provisions of said act the original petition herein was filed on February 24, 1930, and an amended petition was filed on September 19, 1934.

2. Subsequent to the decision of the Supreme Court on January 14, 1931, in *United States v. Seminole Nation*, 299 U. S. 417, holding that there could be no recovery for items included for the first time in an amended petition filed after the expiration of the statute of limitations, Congress passed an act, approved August 16, 1937 (50 Stat. 650), which provided:

That in suits heretofore filed in the United States Court of Claims by the Five Civilized Tribes under their respective Jurisdictional Acts . . . plaintiffs therein shall have the right, prior to January 1, 1938, to amend their petitions to conform to any evidence heretofore filed in said suits, whether such amended petitions develop original claims or present new claims based upon said evidence; and jurisdiction be, and is hereby, conferred upon said Court of Claims,



notwithstanding the lapse of time or statutes of limitation, to hear, examine, adjudicate, and render judgment in any and all legal and equitable claims which may have been presented by said Indian Nations in any amended petitions heretofore filed, or which may be filed under the terms of this Act; and claims so presented shall be adjudicated by said court upon their merits as though presented by petition filed within the time limited by said respective original Jurisdictional Acts, as amended; and any case presenting claims which may have been dismissed upon the ground that new claims were set up by amended petition, after the expiration of the time limitation fixed in said original Jurisdictional Acts, as amended, shall be reinstated and retried by said court on their merits.

Under the terms of said act this case was reinstated on September 30, 1937. A second amended petition was filed on November 8, 1937.

3. Under the terms of article VIII of the treaty of August 7, 1856 (11 Stat. 699, 702), between the United States and [fol. 18] the Creek and Seminole Tribes of Indians, the United States agreed in respect of the Seminoles, among other things:

• • • to provide annually for ten years the sum of three thousand dollars for the support of schools; two thousand dollars for agricultural assistance; and two thousand two hundred dollars for the support of smiths and smith shops among them, • • •

said sums to be applied to said objects in such manner as the President should direct.

For each fiscal year during the ten-year period from 1858 to 1867, inclusive, Congress annually appropriated as provided by article VIII of the said treaty the following amounts: \$3,000 for support of schools; \$2,000 for agricultural assistance; and \$2,200 for the support of smiths and smith shops, or a total of \$72,000, the amount due the Seminoles under these provisions of the treaty.

While the said amounts were duly appropriated by Congress and made available for the purposes named, only \$10,436.58 of the amounts so appropriated was disbursed

in payment of the above treaty obligations. The balance of \$61,563.42 was disbursed by the United States prior to June 30, 1866, for the purpose of clothing and feeding refugee and destitute Indians who had been driven from their homes during the Civil War on account of their friendship for the government.

4. Under the provisions of article IX of said treaty of August 7, 1856, the United States agreed to expend for the Seminoles then in Florida, after they had all removed to the Seminole country west, the sum of twenty thousand dollars in improvements. Accordingly, in March 1857 Congress appropriated \$20,000 to be expended for improvements for the Seminoles in Florida after they had removed to the Seminole country west. After a number of them had been so removed, there was disbursed from this appropriation for improvements the sum of \$18,210.00.

5. Under the provisions of said article VIII of the treaty of 1856 the United States further agreed in respect of the Seminoles:

• • • to invest for them the sum of two hundred fifty thousand dollars, at five per cent per annum, the interest to be regularly paid over to them per capita as annuity; [fol. 19] the further sum of two hundred and fifty thousand dollars shall be invested in like manner whenever the Seminoles now remaining in Florida shall have emigrated and joined their brethren in the west, whereupon the two sums so invested, shall constitute a fund belonging to the united tribe of Seminoles, and the interest on which, at the rate aforesaid, shall be annually paid over to them per capita as an annuity; • • •

After the passage of the act of July 26, 1866 (14 Stat. 263, 264), Congress annually appropriated for each fiscal year from 1867 to 1909, both inclusive, the sum of \$25,000 as provided for in the above article.

During each year through and including the year 1906 the United States disbursed the sums thus appropriated either by making direct per capita payments to members of the tribe or by cash payments to the treasurer of the Semi-

seminole Nation, except for the following years when the amount so disbursed was as follows:

Year	Payment	Deficit	Overpayment
1867	\$12,500.00	\$12,500.00	
1868	24,556.00	450.00	
1869	24,999.75	.25	
1870	19,679.00	5,321.00	
1871	12,500.00	12,500.00	
1872	12,374.55	12,625.45	
1873	12,401.00	12,599.00	
1874	13,898.42	11,101.58	
1875	25,082.25		82.25
1876	500.00	24,500.00	
1877	36,381.00		11,381.00
1879	24,546.00	454.00	
1880	25,454.00		454.00
1882	25,028.00		28.00
1883	25,182.29		182.29
1907	12,500.00	12,500.00	

The excess of the foregoing deficits over the overpayments is \$92,423.74.

In the following years the United States disbursed the following amounts of said appropriations for the benefit of the Seminole Nation, but for purposes other than that specified in said article. These payments were made pursuant to resolutions of the Seminole General Council:

Year	Amount
1870	\$17,821.00
1871	12,500.00
1872	12,500.00
1873	12,500.00
1874	11,101.64

[fol. 20] In the years 1907 to 1909, both inclusive, the following amounts of said appropriations were paid to the United States Indian Agent:

Year	Amount
1907	\$12,500.00
1908	25,000.00
1909	25,000.00

6. By article.III of the treaty of March 21, 1866 (14 Stat. 755), it was, among other things, provided:

\* \* \* seventy thousand dollars to remain in the United States treasury, upon which the United States shall pay an

annual interest of five per cent; fifty thousand of said sum of seventy thousand dollars shall be a permanent school fund, the interest of which shall be paid annually and appropriated to the support of schools; the remainder of the seventy thousand dollars, being twenty thousand dollars, shall remain a permanent fund, the interest of which shall be paid annually for the support of the Seminole government; . . .

Appropriations were made for the payment of interest on the funds named in the above treaty provision for each fiscal year from 1867 to 1909, inclusive.

During the fiscal years 1867 to 1874, both inclusive, of the \$20,000 theretofore appropriated in payment of accrued interest on the \$50,000 permanent school fund, \$16,902.80 was disbursed by defendant for educational purposes. During the years 1875 to 1907, both inclusive, defendant paid into the Seminole national treasury the entire amount appropriated for interest on the \$50,000 school fund and on the \$20,000 for the support of the Seminole Government. During said period the Seminole Nation disbursed from its treasury not less than the sum of \$7,500 per annum for the maintenance of its schools.

7. Article VI of said treaty of March 21, 1866, provides:

Inasmuch as there are no agency buildings upon the new Seminole reservation, it is therefore further agreed that the United States shall cause to be constructed, at an expense not exceeding ten thousand (\$10,000) dollars, suitable agency buildings, the site whereof shall be selected by the agent of said tribe, under the direction of the superintendent of Indian Affairs; in consideration whereof, the Seminole Nation hereby relinquish and cede forever to the United States one section of their lands, upon which said agency buildings shall be directed [erected], which land shall revert to said nation when no longer used by the United States, upon said nation paying a fair value for said buildings at the time vacated.

By act of July 28, 1866 (14 Stat. 319), Congress appropriated \$10,000 for the purpose of erecting agency buildings as provided for in said article. This money was not used and was thereafter returned to surplus. By act of May 18, 1872 (17 Stat. 132), another appropriation was made to



take the place of the amount so returned to surplus. \$9,030.15 of this amount was used for some purpose, but for what purpose the record does not reveal. However, an agency building was erected on the Seminole reservation in the year 1873.

In the years 1870 and 1872 the amount of \$931.76 was expended from general appropriations for agency buildings and repairs.

8. During the fiscal years 1899 to 1907, both inclusive, the defendant made payment to the tribal treasurer of various moneys due the Seminole Nation in the total sum of \$864,702.58. Of this total amount, \$212,500 was interest on the two trust funds of \$250,000 each set up under article VIII of the treaty of 1856; \$29,750 thereof was interest on the trust funds of \$50,000 and \$20,000 under article III of the treaty of 1866; \$622,156.87 thereof was interest on the fund of \$1,500,000 set up under the act of March 2, 1889 (25 Stat. 980, 1004); and \$295.71 was "Indian moneys, proceeds of labor."

These moneys were paid to the tribal treasurer at the request of the council of the plaintiff, but over the protest of some of the individual members of the tribe. They were all expended by the tribal officers, except the sum of \$1,128.88, which was paid to the defendant's representative after the disbursement of all funds had been taken away from the tribal officers by the act of April 26, 1906 (34 Stat. 137).

The books of the tribal treasurer showing the receipt and expenditure of these moneys are crude, and no proof was introduced as to their accuracy, but such as they are they tend to show that \$815,059.71 of these moneys were expended [fol. 22] by the tribal officials in the years 1899 to 1906, both inclusive, for the following purposes and in the following amounts:

Tribal officers	\$152,900.00
Emahaha Mission School	79,000.00
Mekusukey Mission School	79,000.00
Day Schools	16,000.00
School expense	8,000.00
Blacksmith	24,000.00
National physician	27,000.00
Per capita payments	341,516.67
Interest	10,533.33
Contingencies	12,000.00

Surplus	29,409.71
Attorney's fees	27,000.00
Church	4,200.00
Spring payments	4,500.00

9. Under article III of the Treaty of 1866 it was agreed that \$40,362 of the consideration due the Seminole Nation for the cession of lands to the United States should be used for subsisting the Seminole Indians. That amount was disbursed for that purpose during the fiscal year 1867. By act of July 27, 1868 (15 Stat. 199, 214) Congress appropriated \$31,083.79 for the following purpose:

To supply a deficiency in appropriation for subsisting Seminole Indians, thirty-one thousand and eighty-three dollars and seventy-nine cents; which amount shall be deducted from any money or funds belonging to said tribe of Indians.

The sum so appropriated was used by defendant during the fiscal year 1869 for the purchase of provisions for the Seminole Indians; but no deduction from plaintiff's funds has been made on that account as required by said act.

10. In undertaking to locate the Seminole Indians on the 200,000 acres provided for them by the treaty of 1866 prior to a survey, an error was made with respect to the location of the eastern boundary of the tract as described in the treaty, as a result of which the Seminoles were placed in possession of lands owned by the Creeks which were located east of and adjoining the tract of 200,000 acres. Upon these lands improvements were placed by the Seminoles before the error was discovered. By act of March 3, 1873 (17 Stat. [fol. 23] 626), the Secretary of the Interior was authorized to negotiate with the Creeks for the relinquishment to the United States of such parts of their country as may have been so occupied by the Seminoles. Thereafter the Creek Nation, for a consideration of \$175,000, ceded to the United States 175,000 acres of its lands located east of and adjoining the 200,000 acres set aside for the Seminoles under the treaty of 1866. In 1888 a survey was made for the purpose of establishing the eastern boundary of the tract of 175,000 acres, but by reason of error in the survey the area inclosed was 177,397.71 acres, for which the Creeks were paid \$177,397.71. This became a part of the Seminole reservation, in addition to the 200,000 acres, more or less, and was dis-

posed of either by allotment to members of the tribe or by sale for the account of the tribe.

11. During the period from the beginning of the fiscal year 1857 and ending with the fiscal year 1866, the United States expended for the benefit of the Seminole Nation the sum of \$42,861.54 for the following purposes:

Purpose	Gratuity Rept., G. A. O. pages	Amount
Agency buildings and repairs.....	27	\$5,209.00
Clothing.....	142, 143	610.00
Education.....	38, 39	2,500.00
Expenses of delegates.....	127, 141	5,155.70
Fuel, light, and water.....	52, 53	98.50
Miscellaneous agency expenses.....	52, 53, 142	1,239.50
Pay of Indian Agents.....	125, 163	15,475.05
Pay of Interpreters.....	52, 124	3,910.00
Pay of miscellaneous employees.....	52, 141	158.50
Presents.....	127	168.80
Provisions and other rations.....	141, 142, 163	4,657.57
Transportation, etc., of supplies.....	52, 53	3,687.92
Total.....		42,861.54

Of the foregoing items the amounts spent for the following were spent gratuitously: clothing, education, presents, provisions and other rations, fuel, light and water, miscellaneous agency expenses, pay of Indian agents, pay of interpreters, pay of miscellaneous employees, and transportation, etc., of supplies.

12. During the period beginning with the fiscal year 1867 and ending with the fiscal year 1898, the United States expended gratuitously for the benefit of the Seminole Nation the sum of \$27,720.90 for the following purposes:

[fol. 24]

Purpose	Gratuity Rept. G. A. O. pages	Amount
Education.....	37, 54, 55	\$171.89
Expenses of delegations.....	40, 143	4,309.00
Feed and care of livestock.....	53, 54, 55, 67	345.00
Fuel, light, and water.....	54, 56, 67	68.50
Medical attention.....	55, 177	425.68
Miscellaneous agency expenses.....	27, 40, 53-57	6,749.94
Pay of Indian Agents.....	40, 55, 125	10,410.77
Pay of interpreters.....	57, 124	3,384.50
Pay of miscellaneous employees.....	54-56	180.00
Provisions and other rations.....	67, 143	659.12
Transportation, etc., of supplies.....	40, 53, 54	1,016.50
Total.....		27,720.90

13. During the period beginning with the fiscal year 1899 and ending with the fiscal year 1934, the United States ex-

pended gratuitously for the benefit of the Seminole Nation the sum of \$32,309.21 for the following purposes:

Purposes	Gratuity Rept. G. A. O. pages	Amount
Appraising .....	43, 47, 48	\$3,474.93
Clothing .....	167-168	5.42
Enrolling .....	42, 45, 46, 48	432.96
Education .....	96, 97, 98, 104, 105, 107, 109, 144-151, 152-154, 173, 174.	20,377.89
Expenses of delegates .....	153	149.90
General office expenses .....	14, 16, 43, 45, 47	2,539.40
Livestock .....	167	35.00
Medical attention .....	51, 152	1,124.12
Miscellaneous agency expenses .....	64, 164, 165	109.69
Pay miscellaneous employees .....	167	10.00
Per capita payment expenses .....	14, 16, 78	507.96
Preservation of records .....	128	40.15
Probate expenses .....	129, 136	2.00
Protecting property interests .....	137, 138	17.50
Provisions and other rations .....	168	216.00
Sale of townsites .....	18, 20	1.65
Surveying .....	43, 45, 48	501.95
Surveying and allotting .....	25	2,663.24
Traveling expenses .....	76, 77	99.45
Total .....		32,309.21

14. During the period from the beginning of the fiscal year 1857 and ending with the fiscal year 1866; the United States expended gratuitously for the benefit of the Seminole and Creek Nations of Indians the sum of \$1,852.75 for the following purposes:

Purpose	Gratuity Rept. G. A. O., page	Amount
Miscellaneous agency expenses .....	52	\$370.75
Pay of miscellaneous employees .....	52	1,027.00
Transportation, etc., of supplies .....	52	455.00
Total .....		1,852.75

[fol. 25] 15. During the period from the beginning of the fiscal year 1867 and ending with the fiscal year 1898, the United States expended gratuitously for the benefit of the Seminole and Creek Nations of Indians the sum of \$1,572.16 for the following purposes:

Purpose	Gratuity Rept. G. A. O. pages	Amount
Annuity expenses .....	53	\$1,316.66
Miscellaneous Agency expenses .....	54, 57	230.50
Pay of Interpreters .....	124	25.00
Total .....		1,572.16

16. During the fiscal years 1857 to 1934 the Seminole Tribe of Indians composed, approximately, 15 per cent of the total population of the Creek and Seminole Tribes, but



what portion of the expenditures set out in findings 14 and 15 was made for the benefit of the Creeks and what portion for the benefit of the Seminoles does not appear.

17. During the period from the beginning of the fiscal year 1867 to the end of the fiscal year 1898, the United States expended gratuitously for the benefit of the Creek, Cherokee, Choctaw, Chickasaw, and Seminole Nations of Indians the sum of \$305,292.80 for the following purposes:

Purpose	Gratuity Rept. G. A. O. pages	Amount
Agricultural implements and equipment.....	56, 58, 59, 68	\$152.20
Feed and care of livestock.....	56-59, 67	1,396.28
Fuel, light, and water.....	56-64, 67	791.50
General office expense.....	41-42	135,219.60
Hardware, glass, oils and paints.....	56, 59	11.24
Livestock.....	56, 58, 59	547.50
Medical attention.....	56-59	161.65
Miscellaneous agency expenses.....	56-64, 172	4,139.91
Pay and expenses of farmers.....	59	226.67
Pay and expenses of Indian police.....	58, 59, 63, 68, 123, 169	80,983.17
Pay of Indian agents.....	121, 125	37,389.53
Pay of miscellaneous employees.....	56-64, 73	43,857.75
Pay of skilled employees.....	56-59, 68	415.80
Total.....		305,292.80

18. During the period from the beginning of the fiscal year 1899 to the end of the fiscal year 1934 the United States expended gratuitously for the benefit of the Creek, Cherokee, Chickasaw, Choctaw, and Seminole Nations of Indians the sum of \$11,416,066.55 for the following purposes:

Purpose	Gratuity Rept. G. A. O. pages	Amount
Agricultural aid.....	23, 24, 166, 167, 168	\$24,331.81
Allotting.....	16, 17, 20	36.65
Appraising.....	44-47, 49	18,665.01
Appraising and selling lands.....	14-20	205,959.07
Appraisal and sale of restricted lands.....	26	24,999.20
Automobiles and repairs.....	22-24, 51, 70, 166-167, 180	23,799.99
Construction and maintenance of Claremore Hospital.....	50-51, 84, 92, 150-151	77,127.98
Copying allotment records.....	69	14,648.72
Education.....	28-36, 50-51, 83, 85-105, 106-114, 144-154, 167- 168.	2,179,846.86
Equalization of allotments, expenses.....	14, 16, 20, 47, 49	207.88
Examining records in disputed citizenship cases.....	44, 45, 49	26,105.59
Feed and care of horses.....	74-80, 139	3,371.96
Fuel, light, and water.....	64, 71	108.20
General office expenses.....	14, 16-20, 42-49	4,218,065.39
Household equipment.....	166-168	2,625.33
Incidental expenses.....	66-74, 80, 139-140	30,115.98
Investigating leases.....	116, 117	29,955.95

Purpose	Gratuity Rept. G. A. O. pages	Amount
Leasing of mineral and other land....	14, 16, 20, 42, 49	4,514.39
Livestock.....	68, 167, 168	1,290.00
Medical attention.....	51, 152, 154, 170, 177	976.41
Miscellaneous agency expenses.....	22-24, 51, 64-68, 70-72, 164-174.	215,416.02
Oil and gas expense.....	16, 17, 19, 20	7,028.28
Oil and gas mining supervision, allotted lands.....	118, 119	85,703.40
Pay and expenses of farmers.....	23, 24, 81-83, 115	327,866.96
Pay and expenses of field matrons....	81-83	6,217.32
Pay and expenses of Indian police....	71, 72; 81-83, 123	174,860.56
Pay of Indian agents.....	121	30,250.00
Pay of clerks.....	120	4,721.62
Pay of Indian inspectors.....	79, 80, 122	22,381.97
Pay of interpreters.....	81-83, 164-168	125,783.64
Pay of miscellaneous employees.....	23, 51, 64, 67, 71, 72, 74- 83, 120, 139-140, 164- 168.	1,717,185.80
Pay of superintendents.....	126, 167, 168	11,220.25
Per capita payment expenses.....	15, 66, 67	141.68
Preservation of records.....	128	8,886.62
Probate expense.....	72, 81-83, 121-136, 166, 168.	1,053,120.71
Protecting property interests.....	137-138	386,847.59
Protecting property interests of re- stricted members.....	15-16	4,741.70
Provisions and other rations.....	167-168	139.27
Purchase of horses.....	77, 139	720.00
Removal of alienation restrictions....	159-161	88,346.12
Sale of allotted lands.....	15	265.12
Sale of restricted lands.....	15	1,577.09
Sale of town lots.....	15, 17, 18, 47, 49, 79, 80	250.44
Sale of town sites.....	47, 49	416.71
Sale of unallotted lands.....	15, 162	53,538.80
Surveying.....	15, 17, 18, 44-47	49,695.31
Surveying and allotting.....	25	7,331.24
Surveying segregated coal and asphalt lands.....	1v, 21	6.76
Surveying, sale, etc., of lands.....	71, 164-168	80,809.05
Timber estimating.....	15, 44	33,776.10
Transportation, etc., of supplies.....	56, 57, 60, 61, 64, 65, 71, 144-150, 166, 167, 174, 175.	7,966.50
Traveling expenses.....	66, 74, 80, 139, 140, 176	22,401.55
Total.....		11,416,066.55

[fol. 27] 19. During the period from 1861 to 1897 the Seminole tribe of Indians composed approximately 4.38 per cent of the total population of the Cherokee, Creek, Chickasaw, Choctaw, and Seminole Nations, and from 1908 to 1928 it composed about 3.08 per cent thereof, and during the entire period from 1861 to 1928 it composed 3.72 per cent thereof; but what portion of the expenditures set out in findings 17 and 18 were spent for the benefit of the Seminole Nation does not appear by the proof.

## CONCLUSION OF LAW

Upon the foregoing special findings of fact, which are made a part of the judgment herein, the court decides as a conclusion of law that the plaintiff is not entitled to recover, and its petition is therefore dismissed.

## OPINION

WHITAKER, Judge, delivered the opinion of the court:

This case was formerly before this court on plaintiff's original and amended petitions. Judgment was entered in favor of the plaintiff for \$1,317,087.27 (82 Ct. Cls. 135). We were reversed in part by the Supreme Court (299 U. S. 417) principally on the ground that the judgment embraced items set up for the first time in an amended petition which was filed after the expiration of the statutory period within which suit could be brought. Upon remand of the case here, judgment was entered in favor of the plaintiff for \$10,099.25.

Following this, on August 16, 1937, Congress passed the act set out in finding 2 giving plaintiff the right to amend its petition to conform to the evidence taken and conferring jurisdiction on this court to render judgment on the items set up for the first time in such amended petition. In pursuance thereto a second amended petition was filed on November 8, 1937.

[fol. 28] Claims Asserted in Paragraph III of Plaintiff's  
Second Amended Petition (Findings 3 and 4)

In this paragraph plaintiff asserts a claim under a portion of article VII of the treaty of August 7, 1856 (11 Stat. 699, 702), and under a portion of article IX of said treaty. The total amount of the claim asserted is \$63,353.42. The amount of \$61,563.42 thereof arises under that provision of article VIII of the treaty of 1856 which reads as follows:

• • • the United States do therefore agree and stipulate as follows, viz: • • • to provide annually for ten years the sum of three thousand dollars for the support of schools; two thousand dollars for agricultural assistance; and two thousand two hundred dollars for the support of smiths and smith shops among them:

The balance of \$1,790 arises under that portion of article IX of the treaty set out in finding 4, under which the defendant agreed to spend the sum of \$20,000 in improvements after all the Florida Seminoles had removed to the "Seminole country west."

As set out in finding 3, the defendant has spent only \$10,436.58 of the total of \$72,000 due under said part of article VIII, leaving a balance due the plaintiff of \$61,563.42. Of the \$20,000 agreed to be spent for improvements, the defendant expended the total amount of \$18,210, leaving a balance of \$1,790, or a total due on the claim asserted in paragraph III of the petition of \$63,358.42. Judgment for this amount was rendered on the former trial, but the Supreme Court reversed as to both of these items (299 U. S. 424, 425) because they had been included for the first time in the amended petition filed after the expiration of the statute of limitations.

The amount of \$63,353.42 has not been expended by the defendant for the purposes set forth in the two above articles of the treaty. However, the act of July 5, 1862 (12 Stat. 512, 528), authorized the President to expend Seminole funds "for the relief and support of such individual members of said tribes" (the Seminoles among the number) "as have been driven from their homes and reduced to want on account of their friendship to the government." A total of \$242,731.88 thereof has been spent for the relief of refugee Indians. Of this amount \$31,599.68 was spent for the benefit of refugee Seminole Indians (pp. 28, 29, G. A. O. report, filed September 6, 1934). The expenditure of so much thereof was authorized by said act. It may be doubted that power resided in the Congress to authorize the expenditure of Seminole funds for the benefit of Indians of other tribes, but article VIII of the treaty of March 21, 1866 (14 Stat. 755, 759), provides:

The stipulations of this treaty are to be a full settlement of all claims of said Seminole nation for . . . all expenditures by the United States of annuities in clothing and feeding refugee and destitute Indians since the diversion of annuities for that purpose, consequent upon the late war with the so-called Confederate States. And the Seminoles hereby ratify and confirm all such diversions of annuities heretofore made from the funds of the Seminole nation by the United States.



It will be noted that the ratification of the expenditures for this purpose relates not only to expenditures for destitute Seminole Indians, but to destitute Indians in general. Irrespective, therefore, of whether or not the expenditures were authorized when made, they were ratified by this treaty. This treaty further provided that the amounts to be paid under it were in full settlement for the expenditures from their funds for destitute Indians.

In our former opinion in this case we held that the ratification by the treaty of 1866 related to expenditures of annuity funds only. We reaffirm this holding, but we are of the opinion that the amounts stipulated for in the quoted portion of article VIII of the treaty of 1856 were annuities; that is to say, annual payments. We do not think that the word "annuities" is to be restricted to annual payments for per capita distribution to the tribe, but embraces all annual payments.

The amount expended for the relief of destitute Indians being in excess of the defendant's obligation under the quoted provision of article VIII of the treaty of 1856, it results that the plaintiff is not entitled to recover on this item.

[fol. 30] As to the item of \$1,790: The defendant obligated itself to expend the \$20,000 in improvements only "after they shall all remove" from Florida to the country west. The proof shows that of the 500 Seminoles in Florida, but 164 of them removed to the country west. Although the condition of the obligation was never met, the defendant spent \$18,210 of the total of \$20,000. This we think more than discharged its obligation, legal or moral, under this article of the treaty, and that, therefore, the plaintiff is not entitled to recover the item of \$1,790.

It results that the plaintiff is not entitled to recover any amount on account of the claim set forth in paragraph III of plaintiff's second amended petition.

#### Claim Asserted in Paragraph IV of Plaintiff's Second Amended Petition (Finding 5)

In this paragraph plaintiff asserts a claim under another portion of article VIII of the treaty of August 7, 1856 (11 Stat. 699, 702) which is set out in finding 5, and which, in substance, provides for the payment to the Seminoles per

capita of interest at 5 per cent on \$500,000. The plaintiff alleges that the defendant has either illegally disbursed or failed to disburse \$154,551.28 of the amount due under this portion of this article of the treaty.

On the former trial of this case the court entered judgment on this item for \$154,551.28. The Supreme Court reversed on two grounds: first, because a part of the amount claimed was due for a period not within that covered by the original petition; and, second, because the findings did not show that any portion of the fund had been illegally disbursed. Since the original petition was not grounded upon the failure to disburse, but only upon illegal disbursements, the Supreme Court held that there could be no recovery under the findings. The second amended petition, on the other hand, prays recovery both for illegal disbursements and for a failure to disburse.

In finding 5 there is set forth a statement of the years in which there was a deficit or an overpayment of the [fol. 31] amount of this interest. It appears that the excess of the deficits over the overpayments is \$92,423.74.

The table shows deficits for the years 1870-1874, both inclusive. In each of these years, however, payments were made out of this fund for purposes other than those specified in article VIII of the treaty in the amounts set out in the finding. These payments were made pursuant to resolutions of the Seminole General Council. The defendant claims credit for these amounts totalling \$66,422.64.

Article VIII of the treaty of 1856 provided that these payments should be made per capita for the benefit of each individual Indian, but whether or not it was an agreement for the benefit of each individual Indian, it was an agreement between the United States and the tribe and not the individuals. The Sac and Fox Indians, 220 U. S. 481. So that we are presented with a case where one of the contracting parties says to the other, I wish you would pay me this money so I can use it for another purpose I have in mind; if you will do so, I agree to relieve you of your obligation to make the per capita payments. If the other contracting party agrees and pays the money as requested, certainly the other party cannot later hold him liable for doing so.

In the year 1907, \$12,500 was paid to the United States Indian Agent. This payment was authorized by section 11

of the act of April 26, 1906 (34 Stat. 137, 141), which provides, in part:

That all revenues of whatever character accruing to the Choctaw, Chickasaw, Cherokee, Creek, and Seminole tribes, whether before or after dissolution of the tribal governments, shall, after the approval hereof, be collected by an officer appointed by the Secretary of the Interior under rule and regulations to be prescribed by him; \* \* \*

The \$92,423.74 must be credited, therefore, with the sum of \$78,922.64, leaving a balance due plaintiff under this portion of article VIII of the treaty of \$13,501.10.

[fol. 32] Claim asserted in paragraph V of plaintiff's second amended petition (Finding 6)

In this paragraph plaintiff asserts a claim for \$90,597.20 under that portion of article III of the treaty of March 21, 1866, (14 Stat. 755) in which the defendant agreed to pay annually 5 per cent interest on \$50,000, or \$2,500, for "the support of schools." In plaintiff's requested finding 8 the amount of this claim is reduced to \$61,347.20. In our former opinion (82 Ct. Cls. 135, 151-152) we held that payments made to the tribal treasury during the years 1875-1879, both inclusive, were unauthorized, and we gave judgment therefor in the amount of \$57,500, and also for underpayments for the years 1867-1874, both inclusive, amounting to \$3,097.20, and for an underpayment of \$750 for the year 1907, amounting in all to the sum of \$61,347.20. The Supreme Court reversed because the claims asserted were not within the statutory period, and because the original petition, as amended, was grounded only on a misapplication of the funds, and not on a mere failure to pay.

Even though the payments to the tribal treasurer during the years 1875-1879 may have been unauthorized, it appears that the tribal treasurer disbursed annually not less than \$2,500 in excess of amounts it was otherwise obligated to expend for the maintenance of its schools.<sup>1</sup> Since the

<sup>1</sup> Annual Reports of Commissioner of Indian Affairs: 1876, pp. 212-213; 1877, pp. 690-691; 1878, pp. 286-287; 1879, pp. 341-342; 1881, pp. 280-281; 1883, pp. 90, 250-251; 1844, pp. 270-271; 1886, pp. 146, 154; 1887, pp. 98, 110; 1888, pp. 113, 122; 1890, pp. 89, 94; 1891, pp. 240, 250; 1892, pp. 247, 256; 1893, pp. 143, 147; 1894, p. 140; 1895, pp. 155, 161; 1896, pp. 151-158.

schools actually got the money, it makes no difference that the payments were made through the agency of the tribal officials. The defendant would be liable, if at all, only if it appeared that the payments were not in fact made.

The \$750.00, which it is alleged was not paid for the year 1907, was paid to the Indian Agent under the authority of section 11 of the act of April 26, 1906 (34 Stat. 137), heretofore quoted.

However, the plaintiff is entitled to recover the underpayments during the fiscal years 1867-1874, both inclusive, in the amount of \$3,097.20.

[fol. 33] Claim asserted under paragraph VI of plaintiff's second amended petition (Finding 7)

In this paragraph plaintiff asserts a claim for \$10,000 under the provisions of article VI of the treaty of March 21, 1866 (14 Stat. 755), under the terms of which the United States agreed that it would erect an agency building on the Seminole reservation "at an expense not exceeding ten thousand (\$10,000) dollars."

In the original opinion in this case it was held that the plaintiff was entitled to recover \$9,068.24, being the balance of \$10,000 after the deduction of \$931.76 shown to have been spent for "agency buildings and repairs." The Supreme Court reversed as to this item because not within the period alleged in the original petition. The plaintiff in its present brief admits that it is entitled to recover under this item no more than \$9,068.24.

Congress by the act of July 28, 1866 (14 Stat. 319), appropriated the sum of \$10,000 for this purpose, but this amount was not used and was returned to surplus. By the act of May 18, 1872 (17 Stat. 132), the sum of \$20,000 was appropriated to replace the appropriation of 1866 returned to surplus and for the erection of an agency building pursuant to the Creek treaty. It appears from the report of the General Accounting Office, filed herein on September 6, 1934, pages 20, 25, and 27, that \$9,030.15 of the \$10,000 appropriated for the Seminole Agency was expended for some purpose, since on July 31, 1875, \$969.85 of that part of the appropriation due the Seminoles was returned to surplus; but it does not appear for what purpose it was used. However, it appears from the report of the Commissioner of Indian Affairs for 1873, pages 211 and 212, that an



agency building was erected on the Seminole reservation in that year. Whether or not the \$9,030.15 was used for this purpose, it nevertheless appears that an agency building was erected and there is no showing by the plaintiff that it was not suitable. Article VI of the treaty of March 21, 1866, provided merely for the erection of "suitable agency buildings" "at an expense *not exceeding* ten thousand [fol. 34] (\$10,000) dollars." [Italics ours.] It appears that agency buildings have been erected and there is no showing that they were not suitable. Therefore, there has been no violation of this article of the treaty.

Claim asserted under paragraph VII of plaintiff's second amended petition (Finding 8)

In this paragraph the plaintiff asserts a claim for all moneys paid to its tribal treasurer after the passage of the Curtis Act of June 28, 1898 (30 Stat. 495). The total amount of these payments was \$864,702.58. Of this amount \$212,500 was paid to fulfill the obligation of article VIII of the treaty of 1856 providing for per capita payments of \$25,000 per annum; \$29,750 of it was to fulfill the obligation of article III of the treaty of 1866 providing for the payment of interest at 5 per cent on \$50,000 for school purposes, and 5 per cent interest on \$20,000 for the support of the Seminole government; \$622,156.87 of it was to fulfill the obligations of section 12 of the act of March 2, 1889 (25 Stat. 980, 1004), which provided for the payment of interest at 5 per cent per annum on \$1,500,000 "to be paid semi-annually to the treasurer of said nation." The remainder of \$295.71 is "proceeds of labor."

Plaintiff says that the payment of these moneys to the tribal treasurer was prohibited by section 19 of the Curtis Act (30 Stat. 495), which reads as follows:

That no payment of any moneys on any account whatever shall hereafter be made by the United States to any of the tribal governments or to any officer thereof for disbursement, but payments of all sums to members of said tribes shall be made under direction of the Secretary of the Interior by an officer appointed by him; *and per capita payments shall be made direct to each individual in lawful money of the United States*, and the same shall not be liable to the payment of any previously contracted obligation. [Italics ours.]

Defendant replies that this section was not intended to apply to any moneys except those required to be distributed per capita among members of the tribe; and, further, that [fol. 35] although unlawfully made, the plaintiff is estopped to complain thereof; and, thirdly, that if unlawfully made, the defendant is entitled to a credit for the payments as gratuities.

On the former trial of this case this court held that all the payments to the tribal treasurer were prohibited by section 19 of the Curtis Act, which section we held applied to the Seminole Nation, and that the plaintiff was entitled to judgment for the entire amount. The Supreme Court reversed, first, on the ground that the original petition was based upon the defendant's alleged refusal to make payments to the tribal treasurer; and, second, that the amended petition, which for the first time complained of the payment of these sums to the tribal treasurer, was filed after the expiration of the statutory period.

We reaffirm our former opinion in this case to the effect that section 19 was intended to apply to the plaintiff. The Secretary of the Interior in making the payments to the tribal treasurer was acting under the authority of an opinion of the Assistant Comptroller of the Treasury. In that opinion the Comptroller held that the Seminole agreement ratified July 1, 1898 (30 Stat. 567), providing as it did for the continuation of existing treaties between the Seminoles and the United States, made section 19 of the Curtis Act inapplicable to the Seminole Nation. He was of the opinion that under these treaties the Secretary of the Interior was authorized to pay funds due the tribe into the tribal treasury; but, as we held in our former opinion, the authority to pay these funds to the tribal treasurer was derived not from a treaty but from the act of April 15, 1874 (18 Stat. 29), which authorized such a disbursement, provided the Council of the tribe agreed thereto. We do not think that the Seminole agreement providing for the continuation of existing treaties had in contemplation an agreement entered into under this Act. It is hardly conceivable that on June 28, 1898, Congress should have passed an Act prohibiting the making of certain payments to the tribal treasurers of all the Five Civilized Tribes, which included the Seminole Nation, and three days later should have passed an Act [fol. 36] repealing this provision as to the Seminoles. We

are of opinion that the prohibition of the Curtis Act applied to the Seminoles.

However, on further consideration, we think the prohibition of section 19 of the Curtis Act had application only to per capita payments. In the first clause of that section it is provided—

That no payment of any moneys on any account whatever shall hereafter be made by the United States to any of the tribal governments or to any officer thereof for disbursement; . . .

but the meaning of this clause is modified by the following one, which reads:

. . . but payments of all sums *to members of said tribes* shall be made under direction of the Secretary of the Interior by an officer appointed by him; . . . [Italics ours.]

The succeeding clause directs how these officers shall make these payments to members of the tribes. It provides:

. . . and per capita payments shall be made direct to each individual in lawful money of the United States, and the same shall not be liable to the payment of any previously contracted obligation.

Except for the second clause of this section, it is perhaps true that the Act would have prohibited the payment to the tribal treasurer of all sums of whatever character and for whatever purpose they were to be used; but the word "but" in the beginning of the second clause connects the second clause to the first and shows that Congress had in mind only the payments due to members of the tribe.

The tribal government in the Seminole Nation was continued after the passage of the Curtis Act, and the former restriction on the enactments of the General Council of the tribe requiring their approval by the President of the United States was removed by the Seminole agreement. The removal of this restriction is inconsistent with a purpose to deprive them of their right to collect moneys due the tribe.

Moreover, as the defendant points out in its brief, the Curtis Act, as originally drawn, directed that not only pay- [fol. 37] ments of sums to members of the tribe should be

made by an officer appointed by the Secretary of the Interior, but also provided that "payments of all expenses incurred in transacting their business" should be so made. When the Act was finally passed, this clause relating to the payment of expenses incurred in transacting their business was eliminated.

We conclude, therefore, that while section 19 of the Curtis Act is applicable to the Seminole Nation, it prohibited the payment to the tribal treasurer of per capita payments only. *Choctaw Nation v. United States*, 91 Ct. Cls. 320. These payments amounted to the sum of \$212,500.

But although the Curtis Act did prohibit the making of these per capita payments to the tribal treasurer, and they were so made in violation of its terms, still we do not think the tribe is entitled to recover. The passage of the Curtis Act did not create in the individual Indians any vested rights. It does not amount to an agreement with the tribe for the benefit of its individual members. It was merely a direction to the agents of the United States. *The Sac and Fox Indians*, supra.

It is not disputed that the tribe got the money. It was paid to it in pursuance of a request of its General Council. Plainly, therefore, the Nation cannot maintain an action for the payment of it a second time. It is only the Nation which is authorized to sue by the jurisdictional act.

It results that the plaintiff is not entitled to recover on this item.

#### Defendant's Counterclaims

##### 1. Defendant's claim for an offset as set out in Finding 9

By the act of July 27, 1868 (15 Stat. 199, 214), Congress appropriated \$31,083.79 for subsisting the Seminole Indians, and provided that that amount should be deducted from any funds belonging to them. This amount was expended, but has not been deducted from the funds due them. The plaintiff admits that the defendant is entitled to this offset. We agree.

##### [fol. 38] 2. Defendant's claim for an amount of lands deeded plaintiff in addition to the tract provided for by the treaty of 1866 (Finding 10)

Under the treaty of 1866 the defendant undertook to provide 200,000 acres of land for the use of the Seminoles.



The east boundary of this tract was to be the west boundary of the Creek reservation. The plaintiff, however, was erroneously located partly on the Creek reservation. When this error was discovered the defendant purchased from the Creek nation 175,000 acres of its lands located east of and adjoining the Seminole reservation, for a consideration of \$175,000. The eastern boundary of this tract, however, was run so as to include not 175,000 acres, but 177,397.71 acres.

When the west boundary was located it developed that the total number of acres in the reservation, exclusive of the 177,397.71 acres above referred to, was 188,449.46 acres, or 11,550.54 less than the 200,000 acres which the defendant was obligated to furnish under the treaty of 1866. The defendant claims an offset of the difference between the 177,397.71 acres and the 11,550.54 acres at \$1.00 per acre.

The defendant was obligated by treaty to purchase only 200,000 acres of land and therefore under the act of August 12, 1935 (49 Stat. 571, 596) it is entitled to an offset for the additional acreage purchased. This was 165,847.17 acres, the purchase price of which was \$165,847.17. The defendant is entitled to an offset of this amount under the above-mentioned act, section 2 of which directs this court—

\* \* \* to consider and to offset against any amount found due the said tribe or band all sums expended gratuitously by the United States for the benefit of the said tribe or band.

### 3. Defendant's claim of gratuity payments as set out in Finding 11

The defendant claims that from 1857 to 1866, both inclusive, it expended gratuitously for the benefit of the Seminole Nation the sum of \$42,861.54 for various purposes, as set out in Finding 11.

In defense the plaintiff insists, first, that the Act of August 12, 1935, has application only to cases that had not [fol. 39] been tried or submitted, and that this case had been tried or submitted prior to the passage of that Act. We think there is no merit in this contention. It had been tried and submitted in this court, but the Supreme Court reversed principally because many of the claims were first asserted after the expiration of the statutory period within which suit could be brought. After an amendatory act was

passed enlarging the period of limitations, a second amended petition was filed setting up these claims. It seems manifest that as to all issues not finally disposed of at the former trial this is not a case that had been tried or submitted.

Secondly, the plaintiff says that many of the expenditures set out in finding 11 were required by treaty. If this be true, of course the defendant is not entitled to the offset.

The first item is for agency buildings and repairs, \$5,200. The plaintiff says these expenditures were required by article XII of the treaty of August 7, 1856 (11 Stat. 699), which provides, in part:

So soon as the Seminoles west shall have moved to the new country herein provided for them, the United States will then select a site and erect the necessary buildings for an agency, including a Council house for the Seminoles.

The defendant replies that this obligation was discharged by the expenditure of \$720 for a Council house and \$4,950 for erecting agency buildings. Both of these amounts and the \$5,200 claimed as a gratuity were spent under appropriation acts appropriating money for agency buildings and repairs, both of which were passed shortly subsequent to the treaty of 1856, one on February 28, 1859, and the other on June 19, 1860. The obligation of the treaty was to erect "necessary" agency buildings. It seems clear that the total amount spent was spent to fulfill the obligations of the treaty and that the defendant is not entitled to this offset.

The next item is "clothing, \$610.00." This amount was expended in the year 1866 pursuant to the Appropriation Act of March 3, 1865 (13 Stat. 541). Under article IX of the treaty of 1856 the defendant obligated itself to remove the Florida Seminoles to the west, and to furnish them [fol. 40] with certain specified articles of clothing. The report of the Commissioner of Indian Affairs of 1858 shows that the Florida Seminoles went to the west in 1858. On March 3, 1857, Congress appropriated the sum of \$120,000 to fulfill the obligations of this article of the treaty. The report of the General Accounting Office filed September 9, 1934, shows that the sum of \$88,697.05 was disbursed for this purpose. This presumably discharged this obligation of the treaty and the disbursement of \$610 in 1866, eight years after the migration, must have been a gratuity. The defendant is, therefore, entitled to this offset.

The next item is "Education, \$2,500.00." This offset the plaintiff concedes the defendant is entitled to. We agree.

The next item is "Expenses of delegates, \$5,155.70." This amount was spent in the year 1857. The plaintiff says this was spent pursuant to article XXIII of the treaty of 1856 (11 Stat. 705), which provides:

A liberal allowance shall be made to each of the delegations signing this convention . . . as a compensation for their travelling and other expenses in coming to and remaining in this city and returning home.

The defendant replies that the obligation of this article was satisfied by the Appropriation Act of March 3, 1857 (11 Stat. 175), appropriating the sum of \$11,000.00—

. . . for the travelling and other expenses of the members of the Creek and Seminole delegations (including the agents and the interpreter for the latter) in coming to Washington, remaining, and returning home, per twenty-third article treaty seventh August, eighteen hundred and fifty-six, . . .

The report of the General Accounting Office, however, does not show a disbursement of this money, but it does show this disbursement of \$5,155.70 for "Expenses of delegates." Since no other expenditure is shown to fulfill this obligation, we think it fair to assume that the claimed gratuity must have been spent therefor. It results the defendant is not entitled to this offset.

Next to the last item is "Presents, \$168.80." The defendant was under no obligation to give "presents" to the plaintiff, and while it may be considered bad form to charge a "present" to the donee, the defendant is nevertheless entitled to this offset under the act of August 12, 1935.

The final item is "Provisions and other rations, \$4,657.57." The plaintiff says that this sum was spent to fulfill the obligation of article IX of the treaty of 1856, which obligated the defendant to remove to the west the Seminoles then in Florida, and to provide them with subsistence during their removal and for twelve months thereafter, and also to provide them with certain specified articles of clothing, etc. The Florida Seminoles removed to the west in 1858. All of the above amounts, except \$300.00, were spent from 1860-1866. We hold, therefore, that the defendant is

entitled to an offset on account of this item in the amount of \$4,357.57.

The remaining items are "Fuel, light, and water, \$98.50," "Miscellaneous agency expenses, \$1,239.50," "Pay of Indian Agents, \$15,475.05," "Pay of Interpreters, \$3,910.00," "Pay of miscellaneous employees, \$158.50" and "Transportation, etc., of supplies, \$3,687.92."

The plaintiff points out in its brief that the treaty of 1856 required the United States to remove intruders from the Indian domain, to issue licenses to such persons as were authorized to trade within the domain, to protect them from domestic strife, hostile invasion, and from aggression from other Indians and white persons; and that the treaty also required the United States to pay the Seminoles certain sums, to pay interest on funds to be distributed per capita, to remove the Seminoles in Florida to the west, and to provide them with rations and subsistence for a certain period, and to distribute among them clothing, to pay delegations of Seminoles to Florida, and to survey the boundaries of the reservation. It says that agents, interpreters, employees and agencies were necessary in order for the United States to carry out these obligations of the treaty.

However persuasive this argument may once have been, this question has heretofore been decided adversely to the plaintiff by the cases of *Blackfeet, et al. Tribes v. United States*, 81 Ct. Cls. 101, 137, and *Shoshone Tribe v. United States*, 82 Ct. Cls. 23, 93. We hold accordingly that the defendant is entitled to these offsets.

[fol. 42] It results that the defendant is entitled to offset \$32,205.84 on account of the items set out in this finding.

#### 4. Defendant's claim of grantuity payments as set out in Finding 12

The plaintiff's position with respect to the items claimed in this finding is that these sums were spent to fulfill the obligation of treaties.

The first item under this finding is "Education, \$171.89." It seems clear that the defendant is entitled to this offset.

The next item is "Expenses of delegations, \$4,309.00." We find no obligation in any treaty requiring the defendant to pay the expenses of any Indian delegation to Washington.

Nor do we find any obligation on the part of the defendant to feed and care for the plaintiff's livestock.



Items similar to the items of "Fuel, light, and water," "Miscellaneous agency expenses," "Pay of Indian Agents," "Pay of interpreters," "Pay of miscellaneous employees," and "Transportation, etc., of supplies" have been heretofore dealt with.

The plaintiff admits that the defendant is entitled to an offset for the item of "medical attention." We agree.

We have heretofore dealt with an item similar to the item of "Provisions and other rations."

It results that the defendant is entitled to offset \$27,720.90 on account of the items set out in this finding.

#### 5. Defendant's claim of gratuity payments as set out in Finding 13

The defendant claims an offset of the following items set out in this finding: appraising, enrolling, preservation of records, probate expenses, protecting property interests, sale of town sites, surveying, surveying and allotting, and traveling expenses. The plaintiff takes the position that the defendant incurred these expenses in carrying out the obligations of its agreements with the plaintiff.

By the treaty of August 7, 1856 (11 Stat. 699), certain lands were granted to the Seminoles west of the Mississippi River to be held by the tribe in common. In article IV of [fol. 43] that treaty it was provided that no portion of the land conveyed "shall ever be embraced or included within, or annexed to, any Territory or State, nor shall . . . ever be erected into a Territory without the full and free consent of the legislative authority of the tribe owning the same." That same treaty in article XV provided that the "Seminoles shall be secured in the unrestricted right of self-government, and full jurisdiction over persons and property, within their respective limits; . . ."

However, by 1893 white people had crowded into this Indian reservation in such numbers that they far outnumbered the Indians and so it became desirable, if not imperative, to abolish the tribal governments in this territory and to bring it under the dominion of the laws of the United States.

In view of this situation, Congress, on March 3, 1893, passed an act (27 Stat. 645) appointing a commission to enter into negotiations with the tribes

\* \* \* for the purpose of the extinguishment of the national or tribal title to any lands within that Territory

• • • either by cession of the same or some part thereof to the United States, or by the allotment and division of the same in severalty among the Indians of such nations or tribes, • • • with a view to such and [an] adjustment • • • as may • • • be requisite and suitable to enable the ultimate creation of a State or States of the Union which shall embrace the lands within said Indian Territory.

The act directed the commissioners to undertake to secure an agreement from the Indian tribes permitting an allotment of the lands in severalty, upon the accomplishment of which they were directed to "cause the lands of any such nation or tribe or band to be surveyed, and the proper allotment to be designated." The amount of \$50,000 was appropriated for the carrying out of the commission.

Acting under the authority thereby vested, the commission entered into agreements with the various tribes in the Indian territory providing for the allotment of the tribal lands to the members of the tribe. The agreement with the Seminoles was ratified on July 1, 1898 (30 Stat. 567). Under that agreement it was provided "that all lands belonging [fol. 44] to the Seminole tribe of Indians • • • shall be divided among the members of the tribe so that each shall have an equal share thereof in value • • • Such allotment shall be made under the direction and supervision of the commission to the Five Civilized Tribes in connection with the representative appointed by the tribal government. • • •" This agreement further provided for the exclusion from lands to be allotted of certain coal, mineral, oil, and natural gas lands, etc., for the leasing and sale thereof, and for the payment to the individual members of the tribe of the proceeds thereof, together with such other money as might be in the hands of the United States belonging to the tribe.

There was no express provision in the Seminole agreement that the United States should bear the expense of the allotment of the Seminole lands, and the majority of the Court is of the opinion that an obligation to do so cannot be implied. *Choctaw Nation v. United States*, 91 Ct. Cls. 320.

We hold, accordingly, the defendant is entitled to an offset of the above-mentioned items.

The plaintiff seems to admit that the defendant is entitled to an offset for the following items: clothing, expenses of delegates, livestock, medical attention, provisions and other rations. We think it is.

We have heretofore dealt with items of general office expenses, miscellaneous agency expenses, pay of miscellaneous employees, and per capita payment expenses. This leaves in dispute the item "Education, \$20,377.89."

In 1904, according to the report of Special Agent Churchill, appointed by the Secretary of the Interior,<sup>1</sup> there were upwards of 100,000 persons of school age residing in the Indian territory who were not eligible to attend the tribal schools and were without free education.

By the Act of April 21, 1904 (33 Stat. 189, 215) Congress appropriated \$100,000 for the maintenance, strengthening and enlarging of the tribal schools of the Creek, Cherokee, Chickasaw, Choctaw and Seminole Nations. Provision was made for the attendance of children of noncitizens. From that time on the schools in the territory were maintained both for members of the tribes and also for white people [fol. 45] and negroes who were not members of the tribes. The report of the Commissioner of Indian Affairs in 1906, pp. 129-131, shows that in the fiscal year ending June 30, 1906, there were enrolled in the various schools in Indian territory 10,832 Indians, 43,011 whites, and 6,104 negroes. The schools were maintained both by appropriations from Congress and also by tribal funds. (See report of the Commissioner of Indian Affairs for 1905, p. 108.)

Since these sums were spent not only for the benefit of the plaintiff, but also for the benefit of white and negro children, it is manifestly improper to charge them against the plaintiff as gratuities, especially since tribal funds were contributed to the support of the schools.

It results that the defendant is entitled to an offset of the amounts listed in finding 13 in the sum of \$32,309.21.

6. Amounts claimed as offsets, as set out in findings 14, 15, 17 and 18

In findings 14 and 15 the defendant seeks an offset of 15 per cent of the amounts spent for the joint benefit of the

<sup>1</sup> House Document No. 522, 57th Cong., 1st sess., pp. 9, 32.

Seminole and Creek Indians, on the theory that the members of the Seminole Nation comprised about 15 per cent of the total population of the Creek and Seminole tribes. The proof does not show how much of the aggregate amount was actually spent for the benefit of the Seminoles and how much for the benefit of the Creeks, but on the basis of prior decisions of this court and of the Supreme Court (see *The Sisseton and Wahpeton Bands of Indians v. United States*, 42 Ct. Cls. 416, 429; 208 U. S. 561, 567) the defendant would be entitled to an offset of 15 per cent of the total amount spent, since the membership in the Seminole tribe was 15 per-cent of the total membership of the Creeks and Seminoles. This amounts to \$513.74.

Defendant also seeks an offset of  $4\frac{1}{2}$  per cent of the amounts set out in findings 17 and 18, which were spent for the benefit of the Creek, Cherokee, Choctaw, Chickasaw, and Seminole Nations, because the members of the Seminole tribe are said to have composed approximately  $4\frac{1}{2}$  per cent of the total population of all the tribes. As in the case of amounts spent for the Creeks and Seminoles jointly, there is no proof as to what percentage of the amount spent [fol. 46] for these five tribes was actually spent for the benefit of the Seminoles, but the proof does show that from 1861 to 1928 the Seminoles composed about 3.72 per cent of the total population of the five tribes. On the basis of the decisions cited supra the defendant is therefore entitled to an offset of 3.72 per cent of the total amount spent for the items listed in findings 17 and 18, amounting to \$436,034.57.

It results that the plaintiff is entitled to recover of the defendant the sum of \$16,598.30, made up of the following items:

Plaintiff's second amended petition:

Paragraph III, findings 3 and 4	\$0.00
“ IV, finding 5	13,501.10
“ V, “ 6	3,097.20
“ VI, “ 7	0.00
“ VII, “ 8	0.00
Total	16,598.30



and that the defendant is entitled to an offset against this of \$725,715.22, made up of the following items:

Finding	9	\$31,083.79
"	10	165,847.17
"	11	32,205.84
"	12	27,720.90
"	13	32,309.21
Findings	14 and 15	513.74
"	17 and 18	436,034.57
Total		725,715.22

Plaintiff's petition must therefore be dismissed. It is so ordered.

Littleton, Judge; Green, Judge; and Whaley, Chief Justice, concur.

[fols. 47-48] VI. JUDGMENT OF THE COURT—January 6, 1941

Upon the special findings of fact, which are made a part of the judgment herein, the court decides as a conclusion of law that the plaintiff is not entitled to recover.

It Is Therefore Adjudged and Ordered that the plaintiff's petition be and the same is hereby dismissed.

#### VII. PROCEEDINGS AFTER ENTRY OF JUDGMENT

On March 5, 1941, the plaintiff filed a motion for a new trial.

On May 5, 1941, the court entered the following opinion and order on said motion:

[fol. 49] VII. OPINION ON PLAINTIFF'S MOTION FOR NEW TRIAL—Filed May 5, 1941

Mr. Paul M. Niebell for the plaintiff. Mr. W. W. Pryor was on the briefs.

Mr. Wilfred Hearn, with whom was Mr. Assistant Attorney General Norman M. Littell, for the defendant. Mr. Raymond T. Nagle was on the brief.

#### ON MOTION FOR A NEW TRIAL

WHITAKER, Judge, delivered the opinion of the court:

1. The plaintiff in its motion for a new trial says that in our opinion filed on January 6, 1941, we misconstrued the provision of article IX of the treaty of August 7, 1856. It

says the expression "after they shall all remove" refers to all of those Seminoles who could be induced to remove, and not to all of the Seminoles in Florida. Upon reconsideration we conclude that plaintiff is right. Under this article the United States agreed to remove to the country west "all those Seminoles now in Florida who can be induced to emigrate thereto." It also agreed to furnish "them" with sufficient rations during "their" removal and for twelve months after "their" arrival at "their" new homes. The words "them" and "their" refer, of course, to those Seminoles who had been induced to emigrate. So, when it was agreed, in conclusion, to "expend for them in improvements [fol. 50] after they shall all remove the sum of twenty thousand dollars," the parties had reference to those Seminoles who could be induced to remove, and not to all the Seminoles in Florida. It is clear that when the treaty was agreed upon the parties contemplated that all of the Seminoles in Florida could not be induced to remove. Surely the defendant did not mean to agree to spend the \$20,000 only on a condition it believed would never be met.

But, it has been suggested that, even though the obligation to spend this \$20,000 in improvements arose on arrival in their new homes of all those Seminoles who could be induced to remove, yet the plaintiff is not entitled to recover, because that was an agreement for the benefit of individual Indians and not for the benefit of the tribe as a whole. The agreement was to spend for the immigrant Florida Seminoles \$20,000 in improvements. It is not expressly stated whether the improvements to be made were public or private improvements, that is, whether they were to be for the common benefit of the Indians as a whole, or for the benefit of each individual; but we assume they were for the common benefit, since no individual owned any particular parcel of land, but all of them owned it all in common.

Does the fact that these improvements were to be for the benefit of the immigrant Florida Seminoles prevent the plaintiff nation from suing to recover the unexpended portion thereof? The Florida Seminoles after their arrival at the Seminole reservation in the west were no longer, if ever, a separate entity. On arrival they became amalgamated with the other members of the tribe and lost whatever identity they may have had. Whatever improvements were made with the \$18,210.00 that was spent were not set apart for the exclusive use of these Florida Seminoles but inured

to the benefit of the whole tribe. No doubt the newcomers were quartered on arrival in an unoccupied part of the reservation, and the improvements were made there and so incurred particularly to their benefit; but there is nothing to show that they were intended for their exclusive benefit. Improvements on the entire reservation were enjoyed by the entire tribe in common. The newcomers had an interest in the improvements already on the reservation in common [fol. 51] with the other members of the tribe, and the earlier arrivals had an interest in the improvements made on the lands occupied by the newcomers in common with them. Neither any individual among those who emigrated from Florida, or the group as a whole acquired title to these improvements to the exclusion of the other members of the tribe.

From the foregoing it seems clear that the cases of *Cherokee Nation v. United States*, 80 C. Cls. 1, *Sioux Tribe v. United States*, 89 C. Cls. 31, and *Blackfeather v. United States*, 37 C. Cls. 233, 190 U. S. 368, have no application. The *Cherokee* case was brought by only a portion of the tribe and for their benefit to the exclusion of other members of the tribe, and the *Sioux* case was grounded on a failure to pay certain individuals what they were individually entitled to, as was also the *Blackfeather* case. In the *Cherokee* case the suit was brought by the Cherokees by blood for their benefit to the exclusion of the Cherokees by adoption. In the *Sioux Tribe* case the suit was to recover amounts to which individual members were entitled when they devoted their allotments to agricultural purposes. The *Blackfeather* case was brought for the benefit of the individual members of the tribe whose property had been damaged or destroyed by depredations.

It results that the plaintiff is entitled to recover the unexpended balance of the \$20,000, or \$1,790. The opinion heretofore filed on January 6, 1941, is amended in accordance herewith.

2. In our opinion filed on January 6, 1941, we held that the defendant was entitled to an offset of all the items listed in finding 13, except the item of "Education, \$20,377.89." By inadvertence, however, we failed to deduct this amount from the total of the items set out in this finding. Accordingly, the figures "\$32,309.21" in the last line of the second full paragraph of the opinion on page 31 must be eliminated

and the figures "\$11,931.32" substituted therefor. The thirteenth finding on page 10 of the opinion will be amended by striking the word "gratuitously" in the third line thereof, putting a comma in the place of the semicolon at the end of the fourth line thereof, and adding after the comma the following: "all of which, except \$20,377.89 for education, was spent gratuitously."

[fol. 52] The foregoing changes will make the second to the last paragraph of the opinion read as follows:

It results that the plaintiff is entitled to recover of the defendant the sum of \$18,388.30, made up of the following items:

Plaintiff's second amended petition:

Paragraph III, findings 3 and 4	\$1,790.00
" IV, finding 5	13,501.10
" V, " 6	3,097.20
" VI, " 7	0.00
" VII, " 8	0.00
Total	18,388.30

and that the defendant is entitled to an offset against this of \$705,337.33, made up of the following items:

Finding 9	\$31,083.79
" 10	165,847.17
" 11	32,205.84
" 12	27,720.90
" 13	11,931.32
Findings 14 and 15	513.74
" 17 and 18	436,034.57
Total	705,337.33

The plaintiff's motion for a new trial is allowed and the former findings of fact and opinion are amended in accordance with the foregoing opinion. It is so ordered.

Green, Judge; Littleton, Judge; and Whaley, Chief Justice, concur.

[fols. 53-54] VIII. ORDER OF COURT AMENDING FINDINGS—  
Filed May 5, 1941

On consideration of the motion for a new trial filed herein by the plaintiff, it is ordered that the findings of fact here-



tofore filed on January 6, 1941 be, and the same hereby are, amended in the following respects, to-wit:

By striking the word "gratuitously" in the third line of the thirteenth finding of fact and the semi-colon at the end of the fourth line thereof, and the substitution in lieu thereof of a comma, and the addition after the comma of the following, to wit: "all of which, except \$20,377.89 for education, was spent gratuitously:".

In all other respects the findings of fact and the conclusion of law heretofore filed on January 6, 1941 will stand. The opinion will be amended in accordance with a memorandum opinion this day filed.

By the Court.

Richard S. Whaley, Chief Justice.

[fol. 55] STIPULATED PORTIONS OF RECORD MATERIAL TO  
ERRORS ASSIGNED—Filed July 12, 1941

Whereas, plaintiff proposes to file a petition for a writ of certiorari in the Supreme Court of the United States to review the judgment of the Court entered herein on January 6, 1941, motion for new trial denied May 5, 1941, and has requested the Court to certify a transcript of the record for such purpose, and

Whereas, error has been assigned to the effect that there is a lack of substantial evidence to sustain certain of the [fol. 56] findings of fact, namely:

As to Item 2 particularly—in finding, contrary to the evidence adduced, that the following amounts appropriated to fulfill Article 8 of the Treaty of August 7, 1856—requiring said moneys appropriated to be disbursed per capita to members of said tribe—were disbursed by the United States for the benefit of the Seminole Nation:

1870	\$17,821.00
1871	12,500.00
1872	12,500.00
1873	12,500.00
1874	11,101.64

As to the counterclaims allowed, the lower court erred in holding and finding:

4. That the petitioner is chargeable with any part of the items of Education, Sale of town lots, Sale of town sites,

Probate expenses, General Office Expense, Surveying Segregated Coal and Asphalt Lands, and other like items of gratuity offset, without substantial evidence in the record to support such a charge against the petitioner.

And Whereas, it is the desire of both parties to confine the review of the evidence to the specific assignments of error above set forth, and to limit the volume of the evidence to be certified for the purpose of considering such assignments.

It is stipulated and agreed that in order to avoid the necessity of filing with the Clerk of the Court copies of such parts of the evidence as defendant considers should become a part [fol. 57] of the record to be certified, as provided in Rule 99 (b) the following is stipulated and agreed upon in lieu of such filing, and shall be of equal effect:

It is, therefore, stipulated and agreed that in addition to matters of which the Court may take judicial notice, the evidence before the Court from which the Court made the findings of fact, asserted in said assignments of error to have been made without substantial evidence in support thereof, was:

#### Finding 5

As to that portion of said finding mentioned in assignment of error referred to above, as "item 2", the evidence consists of a Supplementary Report of the Comptroller General of the United States, dated October 20, 1938, filed and received in evidence December 27, 1938, pertinent extracts from which and from exhibits attached thereto are as follows:

[fol. 58] Comptroller General of the United States

Washington, Oct. 20, 1938.

A-31090.

The Honorable,  
The Attorney General.

Ct. Cls. No. L-51

SEMINOLE NATION OF INDIANS

v.

THE UNITED STATES

SIR:

Further reference is made to your letter dated September 19, 1938, relative to the above entitled cause as follows:

"In order that the Government's defence to certain of the claims asserted by plaintiff in the above-styled cause may be properly presented, it is deemed expedient that your office make a report supplementing its report of September 29, 1933, made in connection with this case, the report to cover the following items:

"1. State an account of moneys appropriated and disbursed subsequent to June 30, 1866, as interest on the \$500,000 Trust Fund established under Article VIII of the Treaty of 1856. (11 Stat. 699.)

"It is desired that such statement show:

(a) What disposition is shown to have been made of that part of the money appropriated to cover interest for the fiscal years 1867, 1868, 1871, 1872, 1873, 1876 and 1907, not shown to have been paid out per capita. (Report G. A. O., pp. 151-154.) If any of the money was paid to the tribal treasurer of the Seminole Nation, you are requested to exhibit as a part of your report photostatic copies of all acts of the Seminole General Council and demands or requests on behalf of the Seminole Nation that such payments be so made.

"(b) Photostatic copies of the act of the General Council of April 8, 1870, requesting that \$17,821 be paid to certain individuals (settlement No. 7243-1870; Report G. A. O., p. 152).

"(c) Photostatic copy of the acts of the General Council for the Seminole Nation of April 28, 1874, authorizing the payment of drafts of the Seminole Nation (settlement No. 5968-1874; Report G. A. O., p. 153).

"(d) Photostatic copy of any and all receipts given by an officer, or representative, of the Seminole Nation for moneys paid on account of the interest covering *said years*.

With reference to item 1, your attention is invited to the enclosed statements, Nos. 1 and 2 marked "Exhibit A". Statement No. 1 covers the period from 1867 to 1906 and sets forth the information requested.

Respectfully, (Signed) R. N. Elliott, Acting Comptroller General of the United States.

(Following are extracts from various Exhibits attached to the supplemental report of the Comptroller General dated October 20, 1938.)

[fol. 59]

**EXHIBIT A**  
**Statement No. 1**  
**Disbursements**

Fiscal Year	Per Capita Payments Allowed	Cash Payments to Individuals	Payments to Seminole Treasurer Disallowed	Payment of Drafts on Seminoles
1870	\$19,679.00	(a) \$17,821.00		
1871	12,500.00		(b) \$12,500.00	
1872	12,374.55		(c) 12,500.00	
1873	12,401.00		(d) 12,500.00	
1874				(f) \$11,101.64

**Notes:**

- (a) See Exhibit (B)
- (b) See Exhibits (C and D)
- (c) See Exhibits (E and F)
- (d) See Exhibits (G and H)
- (f) See Exhibit (L)

[fol. 60]

**EXHIBIT "B"**

Be it enacted by the General Council of the Seminole Nation, this 8th day of April 1870 That Capt. T. A. Baldwin U. S. Agent be and he is hereby authorized to pay the amount of Seventeen Thousand Eight hundred and twenty one Dollars, (17,821) to the following Individuals out of money now placed in his hands for our Nation as annuity—etc. After the manner and in the sums hereinafter prescribed.

Names of Individuals	Dollars	Cents	Remarks
----------------------	---------	-------	---------

[The list of creditors to whom payments were made, showing names, amounts, totaling \$17,821.00, and explanatory remarks, here follows:]

[Signed.] John Jumper Chief (his x mark). Long John Chief (his x mark). Nuth Cap Hays (his x mark). Fors Hut Chubby (his x mark).

Witness to signatures: John Brown, Clk. General Council.

[fol. 61]

**EXHIBIT "C"**

Whereas the Seminole Nation is indebted in the Sum of Nineteen Thousand Eight hundred and Seventy four dollars, and Sixty Seven cents (\$19,874.67) as salaries to its officers, and other necessary expenses incurred in operating the machinery of its government; and whereas many of the accounts before us, presented for payment, are long



past due and unpaid on account of not having the proper amount of money at our disposal; and being anxious to liquidate the entire amount at an early — day as possible; and having no other means within our reach to apply to the same:

Now, therefore, Be it enacted by the General Council of the Seminole Nation that Henry Breiner U. S. Indian Agent for the Seminoles, be, and he is hereby required to pay into the treasury of the Seminole Nation the Sum of twelve thousand five hundred dollars (\$12,500) as annuity accruing by force of treaty Stipulation, and due on the 1st and 2nd quarters 1871; and also the further sum of five hundred dollars (\$500) for National purposes, due on the 1st and 2nd quarters 1871, making the Sum total thirteen thousand dollars (\$13,000). The said Sum to be applied to the purposes indicated in the act. By direction of the General Council.

John Chup-co, His (X) Mark; John Jumper, His (X) Mark, Principal Chiefs of the Seminole Nation.

May 12th, 1871.

John F. Brown, National Secretary.

Witness: J. R. Ramsay.

[fol. 62]

EXHIBIT "D"

THE UNITED STATES,

To Seminole Nation,

Dr.

Date		Dollars	Cents
June	For interest on \$500,000 @ 5% per annum, 8th Article, treaty of August 7th, 1856, Annuity due for 1st and 2nd quarters 1871.....	\$12,500	00
30th	For interest on \$20,000 @ 5% pr annum pr 3rd Article, treaty of March 21st, 1866, for Support of Seminole Government, due for 1st and 2nd quarters 1871.....	500	00
1871			
		\$13,000	00

Received at Seminole Agency May, 12th, 1871; of Henry Breiner, Thirteen thousand Dollars, in full of the above account.

Witness

J. R. Ramsay

(Name illegible) (Triplicates.)

John F. Brown, Treasurer

John Chup co his x mark

John Jumper his x mark chiefs

I certify on honor, That the above account is correct and just, and that I have actually this 12th day of May, 1871, paid the amount thereof.

Henry Breiner  
U. S. Indian Agent

[fol. 63]

## EXHIBIT "E"

Whereas the Government of the Seminole Nation is indebted to the present sum of \$18,694.93 (Eighteen thousand six hundred and ninety-four dollars & 93/cts.) for the erection of Smith Shops and the payment of Smith, and in carrying on the business of the said Government.

Therefore, Be it Resolved by the General Council of the Seminole Nation that in order to defray the expense necessarily incurred in operating this Government, Henry Breiner U. S. Indian Agent is hereby required to pay into the National Treasury of this nation \$13,000 (thirteen thousand dollars) to be applied as the General Council shall direct.

\$12,500 (Twelve thousand five hundred dollars) of said sum of thirteen thousand dollars, being the interest on \$500.00 dollars, by Art. 8th Treaty of August A. D. 1856 for the 1st & 2nd quarters of A. D. 1872. The remaining sum of \$500 (Five hundred dollars) being the interest on \$20,000 by Art. 3d, Treaty March A. D. 1866, also for the 1st & 2nd Quarters of A. D. 1872.

John Chupco, His (X) Mark, John Jumper, His (X) Mark, Principal Chief- Seminole Nation.

John F. Brown, National Secretary.

[fol. 64]

## EXHIBIT "F"

## THE UNITED STATES,

To Seminole Nation....., Dr.

Date		Dollars	Cents
June	For interest on \$500,000 @ 5% per annum, 8th Article. Treaty of August 7th, 1856, annuity due for the 1st and 2nd quarters of 1872.	\$12,500	00
30th,	For interest on \$20,000 @ 5% per annum pr. 3d Article Treaty of March 21st, 1866, for support of Seminole		
1872	Government, due for 1st and 2nd Quarter 1872	\$	500 00
		\$13,000	00

Received at Seminole Agency April 24, 1872, of Henry Breiner, Thirteen Thousand Dollars, in full of the above account.

## Witnesses—

E. J. Brown  
D. N. Robb,  
(Triplicates)

John F. Brown, Treasurer  
John Chupco, his Chief  
mark  
John Jumper, his X mark

I certify on honor, That the above account is correct and just, and that I have actually, this 24th day of April, 1872, paid the amount thereof.

Henry Breiner  
U. S. Indian Agt.

[fol. 65]

## EXHIBIT "G"

May 13th, 1873.

Resolved by The General Council of the Seminole Nation that Agent Henry Breiner be and is hereby authorized to pay into the Treasury of the Seminole Nation the sum of twelve thousand five hundred dollars pr. 8th Article Treaty of August 7th A. D. 1856, and for the 1st and 2nd quarters of 1873—: Also the sum of five hundred dollars pr. 3rd Article Treaty March 1866.

John Chupco, His (X) Mk., John Jumper, His (X) Mk., Princ-p-l Chief- Seminole Nation.

John F. Brown, Nat. Secretary.

[fol. 66]

## EXHIBIT "H"

## THE UNITED STATES,

Date	To Seminole Nation,	Dr.	
		Dollars	Cents
June	For interest on \$500,000 @ 5% per annum for 1st and 2nd Quarters 1873, pr 8th Article treaty August 7th 1856, to be paid per capita, or in such manner as the Indians in Council shall determine.	\$12,500	00
30,	For interest on \$20,000 @ 5% per annum for 1st & 2nd Quarters 1873, for Support of Government pr 3rd Article treaty, March 21st 1866.	500	
1873			13,000.00

RECEIVED at Seminole Agency May 16, 1873, of Henry Breiner, Thirteen thousand Dollars, in full of the above account.

(Triplicates.) John F. Brown  
Treasurer  
Seminole Nation

I CERTIFY ON HONOR, That the above account is correct and just, and that I have actually, this 16th day of May, 1873, paid the amount thereof.

Henry Briener  
U. S. Indian Agt.

[fol. 67]

## EXHIBIT "L"

Resolved by the General Council of the Seminole Nation, that Henry Breiner U. S. Indian Agent be requested and is hereby fully authorized to pay all National Warrants bearing date 10th May A. D. 1873 to the amount of 970.86  
10130.72

(Eleven Thousand one hundred & one & 58/100 Dollars including interest at the rate of 10% pr. annum to the 26th April A. D. 1874 inclusive when and wherever found & presented for payment: Provided the warrant, shall be held by said Agent as vouchers to be delivered into the hands of the proper officer of Seminole Nation together with the residue of the annuity fund accruing to said nation after payment of said warrant—Approved.

John Jumper, His (X) Mark, and John Chupco, His (X) Mark, Principal Chief-, Seminole Nation.

John F. Brown, Clk. Council.

April 28th, 1874.

[fol. 68]

## FINDINGS 11 TO 19, INCLUSIVE

The evidence as to these findings consists of a Supplementary Report of the Comptroller General dated September 4, 1936, filed and received in evidence October 7, 1937, which contains, among other things, reports as specified hereinafter, and which reads in part as follows:

[fol. 69] A-31090

September 4, 1936

The Honorable The Attorney General

Sir:

Further reference is made to your letter of September 6, 1935, in which you request to be furnished with a report showing all sums expended under gratuity appropriations by the United States for the benefit of the Seminole Nation of Indians, for use as offsets in suits filed by said Indians



in the Court of Claims, as provided for in the Second Deficiency Appropriation Act, fiscal year 1933, section 2, 49 Stat. 596.

In accordance with your request there is transmitted herewith a report, in duplicate, of disbursements made by the United States for the benefit of the plaintiffs under other than treaty appropriations, during the period from July 1, 1857, to June 30, 1934. There is also incorporated in this report detail of disbursements under appropriations made for the administration of the affairs of the Five Civilized Tribes, referred to on pages 233 to 235 of the report of this office on Seminole Petition No. L-51, forwarded to you on September 29, 1933, together with a complete list of appropriations under which the aforesaid disbursements were made.

Respectfully, (Signed) R. N. Elliott, Acting Comptroller General of the United States

Enclosures: Pages 1 to 208.

[fol. 70] As to findings 11, 12 and 13, it is agreed that the Comptroller General reported that the United States expended under gratuity appropriations for the benefit of the Seminole Nation the respective amounts, during the respective periods of time, and for the respective purposes, specified in the items set forth in each of said findings.

As to findings 14 and 15, it is agreed that the Comptroller General reported that the United States expended under gratuity appropriations for the benefit of the Seminole and Creek Nations jointly the respective amounts, during the respective periods of time, and for the respective purposes, specified in the items set forth in each of said findings.

As to finding 16, it is agreed that the finding correctly states the facts.

As to findings 17 and 18, it is agreed that the Comptroller General reported that the United States expended under gratuity appropriations for the benefit of the Seminole, Creek, Cherokee, Chickasaw, and Choctaw Nations jointly the respective amounts, during the respective periods of time, and for the respective purposes, specified in the items set forth in each of said findings.

It is further agreed that the item "Education—\$2,179,846.86", in finding 18, includes the expenditures set

forth in the following extracts of schedules attached to said report:

[fol. 71]

(Id. p. 30).

### Disbursement Schedule No. 9

Disbursements made by the United States for the benefit of the Seminole Nation of Indians under the appropriation:

"Cherokee Orphan Training School, Five Civilized Tribes, Oklahoma" . . .

Jointly with the Creek, Cherokee,  
Chickasaw and Choctaw Indians  
Education:

Maintenance of Cherokee  
Orphan Training School

Total

\$359,978.00<sup>1</sup>

(Id. p. 31)

### Disbursement Schedule No. 10

Disbursements made by the United States for the benefit of the Seminole Nation of Indians under the appropriation:

"Cherokee Orphan Training School, Five Civilized Tribes, Oklahoma: Dining Hall and Equipment" . . .

Jointly with the Creek, Cherokee,  
Chickasaw and Choctaw Indians  
Education:

Maintenance of Cherokee  
Orphan Training School

Total

\$38,518.86<sup>2</sup>

<sup>1</sup> The foregoing total was disbursed during the fiscal years 1914 to 1924. The disbursements for each fiscal year shown by the report are omitted.

<sup>2</sup> The foregoing total was disbursed during the fiscal years 1922 to 1928. The disbursements for each fiscal year shown by the report are omitted.

[fol. 72]

(Id. p. 32)

## Disbursement Schedule No. 11

Disbursements made by the United States for the benefit of the Seminole Nation of Indians under the appropriation:

"Cherokee Orphan Training School, Five Civilized Tribes, Oklahoma: Heating Systems" . . .

Jointly with the Creek, Cherokee,  
Chickasaw and Choctaw Indians  
Education:

Fiscal year	Maintenance of Cherokee Orphan Training School
1918	\$ 172.87
1919	5,462.00
Total	\$5,634.87

(Id. p. 33)

## Disbursement Schedule No. 12

Disbursements made by the United States for the benefit of the Seminole Nation of Indians under the appropriation:

"Cherokee Orphan Training School, Five Civilized Tribes, Oklahoma: Purchase of Land" . . .

Jointly with the Creek, Cherokee,  
Chickasaw and Choctaw Indians  
Education:

Fiscal year	Maintenance of Cherokee Orphan Training School
1917	\$1,500.00
1918	1,800.00
1919	2,403.00
Total	\$5,703.00

[fol. 73]

(Id. p. 34)

## Disbursement Schedule No. 13

Disbursements made by the United States for the benefit of the Seminole Nation of Indians under the appropriation:

"Cherokee Orphan Training School, Five Civilized Tribes, Oklahoma: Repairs and Improvements" . . .

Jointly with the Creek, Cherokee,  
Chickasaw and Choctaw Indians  
Education:

Maintenance of Cherokee  
Orphan Training School

Total

\$61,450.95<sup>1</sup>

(Id. p. 35)

## Disbursement Schedule No. 14

Disbursements made by the United States for the benefit of the Seminole Nation of Indians under the appropriation:

"Cherokee Orphan Training School, Five Civilized Tribes, Oklahoma: School Building and Assembly Hall"

Jointly with the Creek, Cherokee,  
Chickasaw and Choctaw Indians  
Education:

Maintenance of Cherokee  
Orphan Training School

Fiscal  
year

1921

\$7,095.24

1922

17,866.68

1923

40.32

Total

\$25,002.24

<sup>1</sup> The foregoing total was disbursed during the fiscal years 1915 to 1924. The disbursements for each fiscal year shown by the report are omitted.



[fol. 74]

(Id. p. 36)

## Disbursement Schedule No. 15

Disbursements made by the United States for the benefit of the Seminole Nation of Indians under the appropriation:

"Cherokee Orphan Training School, Five Civilized Tribes, Oklahoma; Tank and Tower" . . .

Jointly with the Creek, Cherokee, Chickasaw and Choctaw Indians.

## Education:

Fiscal	Maintenance of Cherokee
year	Orphan Training School
1922	\$1,000.00

[fol. 75]

(Id. pp. 50, 51)

## Disbursement Schedule No. 19

Disbursements made by the United States for the benefit of the Seminole Nation of Indians under the appropriation:

"Conservation of Health among Indians" . . .

Jointly with the Creek, Cherokee, Chickasaw and Choctaw Indians

## Education:

Maintenance of Cherokee Orphan Training School	2.96
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(Id. pp. 81, 83)

## Disbursement Schedule No. 29

Disbursements made by the United States for the benefit of the Seminole Nation of Indians under the appropriation:

"Increase of Compensation, Indian Service" . . .

Jointly with the Creek, Cherokee, Chickasaw and Choctaw Indians

Education:

Maintenance of Cherokee Orphan Training School 21,297.93

[fol. 76]

(Id. pp. 85, 88)

#### Disbursement Schedule No. 31

Disbursement made by the United States for the benefit of the Seminole Nation of Indians under the appropriation:

"Indian Boarding Schools" . . .

Total

Jointly with the Creek, Cherokee, Chickasaw and Choctaw Indians

Education:

Maintenance of Cherokee Orphan Training School

\$1,126,449.76

(Id. pp. 89, 91)

#### Disbursement Schedule No. 32

Disbursements made by the United States for the benefit of the Seminole Nation of Indians under the appropriation:

"Indian School and Agency Buildings" . . .

Total

Jointly with the Creek, Cherokee, Chickasaw and Choctaw Indians

Maintenance of Cherokee Orphan Training School 5,541.49

[fol. 77]

(Id. p. 93)

## Disbursement Schedule No. 34

Disbursements made by the United States for the benefit of the Seminole Nation of Indians under the appropriation:

"Indian School Transportation" . . .

Jointly with the Creek, Cherokee, Chickasaw and Choctaw Indians

Education:

Maintenance of Cherokee Orphan Training School

Total . . . . . \$736.96<sup>1</sup>

(Id. p. 94)

## Disbursement Schedule No. 35

Disbursements made by the United States for the benefit of the Seminole Nation of Indians under the appropriations:

"Indian Schools" . . .

Jointly with the Creek  
Cherokee, Chickasaw  
and Choctaw Indians

Education:

Fiscal year	Maintenance of Cherokee Orphan Training School
1930 . . . . .	\$1,802.70
1931 . . . . .	10,708.28
1933 . . . . .	875.00
Total . . . . .	\$13,385.98

<sup>1</sup> The foregoing total was disbursed during the fiscal years 1914 to 1922. The disbursements for each fiscal year shown by the report are omitted.

[fol. 78]

(Id. p. 95)

## Disbursement Schedule No. 36

Disbursements made by the United States for the benefit  
of the Seminole Nation of Indians under the appropriation:

"Indian Schools: Additional Furniture and Equipment"

Jointly with the Creek, Cherokee,  
Chickasaw and Choctaw Indians  
Education:

Fiscal year	Maintenance of Cherokee Orphan Training School	
1931		\$295.10

[fol. 79]

(Id. p. 110)

## Disbursement Schedule No. 39

Disbursements made by the United States for the benefit  
of the Seminole Nation of Indians under the appropriation:

"Indian Schools: Subsistence" . . .

Jointly with the Creek, Cherokee,  
Chickasaw and Choctaw Indians.  
Education:

Fiscal year	Maintenance of Cherokee Orphan Training School	
1929		\$436.85

(Id. p. 111)

## Disbursement Schedule No. 40

Disbursements made by the United States for the benefit  
of the Seminole Nation of Indians under the appropriation:

"Indian Schools: Subsistence, Summer Months" . . .

Jointly with the Creek, Cherokee,  
Chickasaw and Choctaw Indians.

Education:

Fiscal year	Maintenance of Cherokee Orphan Training School	
1931		\$598.88
1932		937.64
1933		2,671.66
1934		644.07

Total		\$4,852.25
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[fol. 80]

(Id. pp. 112, 114)

## Disbursement Schedule No. 41

Disbursements made by the United States for the benefit of the Seminole Nation of Indians under the appropriation:

"Indian Schools: Support" . . .

Jointly with the Creek, Cherokee,  
Chickasaw and Choctaw Indians.

Education:

Maintenance of Cherokee Orphan Training School 10.00

(Id. pp. 144, 151)

## Disbursement Schedule No. 58

Disbursements made by the United States for the benefit of the Seminole Nation of Indians under the appropriation:

"Purchase and Transportation of Indian Supplies" . . .

Jointly with the Creek, Cherokee,  
Chickasaw and Choctaw Indians.

Education:

Maintenance of Cherokee Orphan Training School 23,224.52

[fol. 81]

(Id. pp. 152, 154)

## Disbursement Schedule No. 59

Disbursements made by the United States for the benefit of the Seminole Nation of Indians under the appropriation:

"Relieving Distress, and Prevention, etc., of Diseases among Indians" . . .

Jointly with the Creek, Cherokee,  
Chickasaw and Choctaw Indians.

## Education:

Maintenance of Cherokee Orphan Training School 4.18

[fol. 82] As to finding 19, it is agreed that the finding correctly states the facts.

Signed this 14<sup>th</sup> day of July, 1941:

Norman M. Littell, Assistant Attorney General, Attorney for Defendant. Paul M. Niebell, Attorney of Record for Plaintiff.

Raymond T. Nagle, Walter C. Shoup, Attorneys.

[fol. 83] Extract from letter of T. A. Baldwin, United States Indian Agent for the Seminoles to the Commissioner of Indian Affairs, Dated December 6, 1869

"I would state that they are in the habit of calling Councils, for any little thing that may arise, and spending from 2 to 15 days without effecting anything whatever, which would be of the least service to the nation [Seminole], except in expending the funds; which are taken out of those ordered paid per 'capita' to the nation.

"I find that it has been the custom heretofore for the Chiefs to order how the payment should be made, but at the same time making return to the department, upon rolls as if it had been paid per 'capita'.

"I think that it is an injustice to the majority of the people, comprising this nation and the only way to avoid unnecessary expenditure of money for Councils, etc. which are of but little benefit to the nation (for example the last council held cost the nation \$700.00 for edibles alone and did no business) is for the department to give special orders in reference as to what amount shall be turned over to the chiefs and the balance paid to heads of families in person."

Extract from Report of Henry Breiner, U. S. Agent for the Seminoles, Dated January 25, 1871

"Estimated cost of Agency residence at the Seminole Agency and furnishing the same with good substantial furniture; and of improving part of the Government Reserva-

tion, Stocking the same and furnishing machinery for all the necessary purposes of Agriculture:

1 Agency Building for residence	7,000.00
1 Meat & Wash house with Water closet & wood house combined	500.00
1 Stable, carriage house & sheds, combined	1,000.00
Fencing yard & well with pump	200.00
Furniture for Agency Residence	1,500.00

Total for Agency Buildings \$10,200.00"

Extract from Letter of Acting Commissioner of Indian Affairs, H. A. Clum, to Henry Breiner, U. S. Agent for the Seminoles, Dated January 5, 1872.

"In reply to your letter of the 20 Dec. last, and to the request of the Seminole Chiefs that their National funds be hereafter paid to the Treasurer of the Nation instead of per capita, I have to say that it is not deemed advisable to change the manner in which payment of annuities to these Indians has heretofore been made until the Department shall be fully satisfied that a proper disposition will be made of the funds if paid in the manner proposed by the Chiefs."

Extract from Letter of the Secretary of the Interior to the Acting Commissioner of Indian Affairs, Dated December 10, 1873

"I hereby acknowledge the receipt of your letter dated Aug. 7th, 1873, enclosing a copy of a letter from Agent Henry Breiner in which he transmits an 'Act of the Seminole General Council dated July 23rd, 1873' to the effect that the U. S. Agent for the Seminoles from and after the date of said act shall be required to pay into the Treasury of said Nation each and every installment of annuity due said Nation as interest accruing on the sum of Five hundred thousand dollars.

[fol. 84] "In reply I have to say that it is the opinion of this Department that the 8th Article of the Treaty of Aug. 7th, 1856, (Stat. Vol. 11, p. 702) which stipulates that the payment of said annuities shall be made to said Indians per capita settles the question and the payments must therefore be made in accordance with said treaty stipulations."

Extract from Report of John P. C. Shanks, Special Commissioner, to the Commissioner of Indian Affairs, Dated August 9, 1875

"These claims are enormous in amount, and show too clearly that the Seminoles are in bad hands. These parties who had these claims (except Harjo, who is an assignee) are or have been officials in the Nation. Robert Johnson is a negro, and is interpreter to the chief; Chupco is present chief; John Jumper was former chief; James Factor, a half breed, is treasurer; E. J. Brown is a white man, formerly U. S. Indian Agent of the Seminole Nation, since has had the address to procure his admission as a member of the tribe.

"These men have evidently stood together in the wrong, of procuring such allowances, and did stand together in refusing to relinquish the claims, or a part of them, except a deduction for present payment upon claims which did not bear interest.

• • • • •  
 "James Factor, the treasurer, issues the warrants and pays them. There is no proper record kept.

"The truth is, that though they have a council, John Jumper, James Factor, John Chupco, E. J. Brown and Robert Johnson, together, and they work together, are in fact the Government of the Seminoles.

• • • • •  
 "They procure a resolution of the council generally, endorsing their claims, but these men control the council, the act being really theirs, but nominally the council.

"There was not an officer in connection with the Executive Department of the Seminole Nation, who could write his own name, at the date of this payment."

Telegram Commissioner of Indian Affairs to A. B. Meacham, Dated November 8, 1878

"Telegram of yesterday received. I hold to the right of every individual Indian to receive his annuity money into his own hands. No creditor can be permitted to gobble his money, directly or indirectly. Therefore if you cannot find the proper man, don't pay anybody else."



Extract from Letter of A. B. Meacham, Special Agent, to the Commissioner of Indian Affairs, Dated November 20, 1878

"Some of the Band Chiefs are tyrants and despots, holding their people under abject fear and in some instances of actual servitude.

"While these Chiefs were blocking the way the people were encamped half starving and suffering from the weather.

"The Chiefs raising every point possible to produce delay, thinking that I would yield and pay the money over to the Band Chiefs. Your answer came Sunday. It was just the thing. Pointed, positive, square, complete. I almost feared you would abate, but thanks for your firmness. The telegram was a thunder clap. It settled the question for once and for all, that the Chiefs should not, by Government [U. S.] authority, 'gobble' the money rightfully belonging to the poor subjects of 'Kings and warriors.'

"The Chiefs intend to 'gobble' the next money for the purpose of keeping up their government. . . . I submit that it is a great shame for the old grey headed Indians and Freedmen to be compelled to attend payment, only to receive the pittance, hold it in their hands for ten seconds to ten minutes, and then giving up one fifth to the Chiefs, and the other four fifths to the traders.

"Perhaps you can prevent this crime being repeated. I trust you can. This little 'annuity' is a curse to the Seminoles. It debases everybody, and ought to be put in shape so that no Chief, or attorney, or Trader, could take advantage of children and decrepit old men and women. The trouble arises out of the ambitions of the Chiefs to control their own affairs, as the other Civilized Tribes of the Territory are doing. The truth is, the Seminoles are behind the Cherokees and Creeks—The Choctaws and Chickasaws I have not met—in civilization.

"As I view this Seminole question it is simply an effort on the part of the Chiefs to hold on to old usages because

they are lords over subjects who have not the courage to resist wrong. It is a perfect system of Bull-dozing the ignorant in order to live upon them.

... As I learn from Seminoles and white men the 'January payment' has always been gobbled up by the Chiefs. The people all come and receive their money but give it all up to the Chiefs at the door not even withholding the small change. I know that you do not approve of this robbery. To make the effort to prevent it, and fail would be bad. To permit the Chiefs to rob their people before the very eyes of an officer is all wrong."

Extract from Letter of A. W. Crain to Hon. Dennis Flynn,  
N. C., Dated May 18, 1902

"I am delegated by a committee of Seminole Indians to obtain some information from you, if from your manifold duties you can give it your attention. This is it. A few years ago through your efforts a Bill was passed by Congress making the Seminole annuity payable to the U. S. Indian Agent. This gave great satisfaction to all the tribe except the official class who through the representation of the Governor that their salaries would cease to be paid, opposed it by a petition of his get up. Then for some reason to us unknown this law was set aside and the annuity has since been paid through his manipulation and entirely to his wish. Your constituents, the merchants of the adjoining country towns in Oklahoma selling better and cheaper goods would like it paid as are all other Indian annuities so they might get trade and the tribe would with the exceptions stated so prefer it. They, the tribe, of course would like same say in the disposition of the funds. Can you give us any information on the subject and have we any recourse to have the law executed?"

Extract from the Recommendations of P. L. Soper, Special Assistant United States Attorney, In Re: Administrator's Report on Estate of Loyal Seminoles

"That the sums of money as therein stated to have been paid out have not been paid to the persons therein named.

"Each report (which was prepared by the Attorney for the Seminole Nation, appearing as the personal attorney of [fol. 86] Mr. A. J. Brown, administrator, who at the same time was treasurer of the Seminole Nation, vice president of the only creditor, the Wewoka Trading Company, and who acted as attorney in fact and agent for Samuel J. Crawford in collecting an unauthorized and illegal fee of twenty per cent of the total amount,) purports to show that the amount due such heir was paid in cash while the testimony and the exhibits introduced in said cases will show at least ninety per cent of the total amount of moneys received by the administrator from Special Agent James E. Jenkins not to have been paid by said administrator in cash.

"The testimony shows that immediately after the passage of the act appropriating one hundred and eighty-six thousand dollars the Wewoka Trading Company, of which the administrator is a partner, extended credit to persons whom they thought were entitled to receive a portion of said money; to the extent of sixty per cent of the amount due each, reserving twenty per cent from the claim of each heir to pay Samuel J. Crawford.

"In the two accounts presented against deceased original claimants, no itemized statement, verified by oath, was ever presented to the administrator for allowance by the Wewoka Trading Co.

"The testimony shows that books were issued and given to each claimant, containing a certain credit, upon which interest was charged from the beginning. Thus no record was ever kept of the nature, character and kind of goods, wares and merchandise each person obtained and the price paid for same. With adults this might not matter, but with minors it is of the utmost importance, especially taking into consideration the state of intelligence of the claimants, and especially the majority of those who testified before your Honor."

Extract of the Report of Henry C. Lewis, Investigator of the Department of Justice, Set Forth in the Letter of Acting Commissioner of Indian Affairs to the Secretary of the Interior, Dated November 11, 1905

"It may not be inappropriate to make one or two observations upon this system of credit. The discount of ten per

cent was taken, according to the administrator's statement, upon the understanding that if the appropriation were paid by the 1st of June following, the discount would be refunded. As a matter of fact, the payment was not made until after the 1st of the following June, so that the company got the benefit of the discount. To charge a discount where goods are given on credit is not unusual, but the system under which it is charged by this company is manifestly unfair, for the reason that when the money is received by the Trading Company the Indians may not have traded out all of the due bills which have been given them, or, in other words, all of the credit extended to them. The result is that a discount has been charged on a part, at least, of the amount given out in due bills, goods for which have not been obtained, while as a matter of fact, the Trading Company has the money in its possession representing such part for which goods have not been obtained, the Indians retaining the remaining due bills to be traded out in the future. It would seem that there should be a discount in favor of the Indians instead of the Trading Company. The Indians are at liberty to turn in the remaining due bills, states Mr. Brown, but they never do so, another result of their pitiable ignorance. Indeed, some of them do not even understand what these due bills represent when they receive them. There is in the record the testimony of one girl who stated that she did not know what the due bills were and threw them away. In point of fact, she threw away so much money. It is not too much to say that, in view of the ignorance of these Indians, this system of credit is dishonest. It should be condemned because it keeps these Indians in a constant state of poverty. They do not realize that these due bills are in fact money, and the result is that they are squandered without care. I am not informed as to whether the Department of the Interior has knowledge of this state of affairs. It should be brought to its attention, so that, if possible, it may take steps looking to the breaking up of the system, which can be done by having the appropriations distributed in some other manner."

[fol. 87] Extract from Report of Wm. L. Bowie, Special Investigator for the Interior Department to Supt. for the Five Civilized Tribes, Dated June 15, 1916

"The Wewoka Realty & Trust Co., is a corporation organized under the laws of the State of Oklahoma with a



capital stock of \$100,000.00, which is divided into 4,000 shares of the par value of \$25.00 each. Mr. A. J. Brown of Wewoka advised me that he owned  $\frac{3}{8}$  of the stock; that his brother John F. Brown owned  $\frac{3}{8}$  and that C. L. Long owned the remainder. A. J. Brown, who is commonly known as Jackson Brown, is president and C. L. Long is secretary and treasurer. John F. Brown is Governor of the Seminole Nation, and A. Jackson Brown is a brother.

“The Wewoka Trading Co., which is owned by the same persons who control the Wewoka Realty & Trust Co., occupies the store buildings in Wewoka which are located on the lots covered by the first and second mortgages given by the Wewoka Realty & Trust Co. to John Smith and Lizzie Yahola. One of the buildings is a well constructed two story brick building, built in 1903, at a cost of approximately \$28,000.00. I estimated it to be about 90 x 90. It is principally valuable for the business uses of the Wewoka Trading Co.

“Governor Brown and his brother have been in the mercantile business in the Seminole Nation for many years. It is a fact much commented upon by those acquainted with Seminole tribal affairs, that for a number of years Governor Brown held the dual relationship to the members of the Seminole tribe of governor and paymaster on the one hand, and Indian trader on the other hand. As governor, he issued the tribal scrip, and, as Indian trader, he held this scrip, requiring the Indians to whom it was issued to endorse it over to him, in payment of merchandise accounts, or for goods to be purchased by them. In this way the Browns monopolized the Indian trade, and, it is stated, that if it had not been for poor business judgment used by them in speculation and in bad business ventures, that they would be in splendid financial condition. In recent years, they have been losing the Indian trade, and reliable persons have advised me that Governor Brown has been gradually losing the confidence of the members of his tribe.

“In my opinion, Governor Brown has shown in his transactions with John Smith and Lizzie Yahola, that

he has little regard for the welfare and protection of the Indians in general, and it is unfortunate that he occupies a position which enables him by reason of the confidence placed in him as such official to impose upon them."

Extract from Letter of E. B. Meritt, Assistant Commissioner of Indian Affairs to the Commissioner of Indian Affairs, Dated July 20, 1916

"Enclosed herewith is a letter from Superintendent Parker based on a report of Special Investigator Bowie concerning Chief John F. Brown and Secretary A. W. Crain of the Seminole Nation in Oklahoma. Attached therewith are memoranda giving the opinions of Mr. Howell and Mr. Dortch, who recommend that the only way to prevent Brown and Crain from continuing to use their official positions to advance their personal interests at the expense of the Indians under their authority is to abolish the tribal government of the Seminole Nation, particularly so since there is so little tribal property remaining and so little need for tribal officers. I concur in their recommendation."

Memorandum of J. H. Dortch, Dated July 20, 1916

"This is the rawest graft deal I have ever come in contact with, but how are we to help ourselves. Held out to the world as the guardian of the Indian we are powerless to protect; it seems, under the law. I believe that if we cannot help this poor Indian we ought to get out of the game. It seems to me that we should at once close up the tribal government and shear the Government of all authority outside the duty of signing the very few deeds now pending, etc. Unless we can intervene as the Indians' 'best friend' in the court's attempt the disgorging process, we should absolutely quit. I agree with Mr. Howell that it will not be wise to remove the tribal authority on charges. The other plan is the best method of dealing with these tiger shore sharks."

[fol. 88] Memorandum of J. W. Howell, Office of Indian Affairs, Dated July 18, 1916

"Report of Supt. Parker of June 28, 1916, shows that two officers of the Seminole Nation, to-wit: John F. Brown, Governor, and A. W. Crain, Tribal Secretary, are engaged in unconscionable transactions with a full-blood Creek woman named Lizzie Yahola.

"The latter is in receipt of a large income resulting from royalties due on oil production taken from her inherited land.

"Crain has a 20% contract for managing her estate, and Brown, with Crain's aid, has obtained loans from the woman aggregating about \$60,000.00 on real estate of, approximately half that value, on foreclosure.

"I do not think it would be advisable to try to remove these officers upon formal charges, but I do think that, as there is no longer any need of Seminole Tribal officers, we should discontinue the Tribal government, following the action which we took as to the Cherokees."

Extract from Letter of Cato Sells, Commissioner of Indian Affairs to John F. Brown, Principal Chief, Seminole Nation, Dated September 22, 1916

"As a preliminary step to the taking of similar action in the Seminole Nation, I have to request that you will tender your resignation immediately as Principal Chief thereof, subject to acceptance by the Secretary of the Interior at such time as he may see fit."

Extract from the Original Report of the General Accounting Office

"In connection with the aforesaid disbursements made to the Treasurer of the Seminole Nation of Indians, attention is invited to the act of April 15, 1874, 18 Stat. 29 \* \* \*

"In accordance with the provisions of the foregoing act, the Seminole Nation of Indians, by an act of the Seminole General Council, approved April 2, 1879, consented to the payment of the annuities then due, or thereafter to become due, under Article 8 of the aforesaid Treaty of August 7, 1856, into the Treasury of the Seminole Nation, provided, however, that the sum of \$5,000 thereof should be appropriated annually by the Seminole General Council to the school fund of said nation. (See Indian Office Files, Union C-315-1879, and Union I-354-1879.)

"With reference to note (x) of the aforesaid balanced statement, attention is invited to the fact that the amounts set out therein are made up of moneys due the United States on account of advances not accounted for and items of disbursements which were suspended and never allowed. \* \* \* The amount of \$26,022.49 is made up of suspended items and includes \$25,000 of the interest appropriated pursuant to Article 8 of the Treaty of August 7, 1856, 11 Stat. 699, prior to 1874, which, instead of being paid per capita, as stipulated

in said article, was paid to the Seminole Treasurer, and therefore was disallowed.

"With reference to note (z) of the aforesaid balanced statement, attention is invited to the fact that the amounts set out therein are made up of moneys due the United States on account of advances not accounted for and items of disbursements which were suspended and never allowed. . . .

The amount of \$20,595.41 includes \$12,500 of the interest appropriated pursuant to Article 8 of the aforesaid Treaty of August 7, 1856, prior to 1874, which, instead of being paid per capita, as stipulated in said article, was paid to the Seminole Treasurer, and therefore was disallowed. The amount of \$32,475.65 was shown in the fiscal officer's account as a per capita payment to the Seminole Indians, but was suspended by the auditor on account of the lack of a certificate of an interpreter and one witness. Said amount of \$32,475.65 includes \$12,500 of the interest appropriated pursuant to Article 8 of the said Treaty of August 7, 1856, . . . ."

"By the act of March 3, 1893, 27 Stat. 645, the President of the United States was authorized to appoint, by and with the advice and consent of the Senate, three commissioners to negotiate with the Seminole, Cherokee, Chickasaw, Choctaw, and Creek Nations of Indians for the extinguishment of the tribal title to the lands held by any and all of said Nations. . . .

"Pursuant to the aforesaid act, commissioners were appointed, who entered into separate agreements with the aforesaid nations of Indians, including the Seminole Nation. Said agreements provided generally that the United States should bear the expense of the administration or division of the tribal estates, which involved the allotment of lands in severalty; the survey, appraisement, and sale of certain lands; the survey and sale of town sites; and the leasing of certain mineral and oil lands. In carrying out said projects, there were also considerable expenses incurred by the United States in the removal of objectionable persons from allotments; the removal of restrictions upon the alienation of lands of certain allottees; the investigation of leases fraudulently obtained, and other expenses, including the pay of commissioners, superintendents, inspectors, attorneys, and miscellaneous employees."

Extract from Supplemental Report of the General Accounting Office,  
Dated September 4, 1936

[fol. 90]

## "Commission, Five Civilized Tribes"

Jointly with the Creek, Cherokee, Chickasaw and Choctaw Indians	Fiscal Year		
	1894	1895	1896
General Office expenses:			
Traveling expenses.....	\$579.64	\$768.51	\$476.98
Incidental expenses.....	1,334.62	1,703.13	1,639.69
Pay of commissioners.....	9,284.40	14,678.09	24,175.80
Pay of miscellaneous employees.....	1,761.95	1,795.55	
Pay of secretary.....	1,027.78	1,783.95	1,637.25
Total.....	\$13,988.39	\$20,729.23	\$27,929.72
	1897	1898	1899
General Office expenses:			
Traveling expenses.....	1,501.84	3,679.41	5,486.74
Incidental expenses.....	2,797.71	6,487.54	7,079.98
Pay of commissioners.....	27,487.71	25,000.00	20,000.00
Pay of miscellaneous employees.....	699.00	1,446.48	5,030.18
Pay of secretary.....	1,673.33	1,709.24	1,856.55
Pay of interpreters.....			217.34
Livestock.....			330.00
Provisions.....			15.25
Feed and care of horses.....			406.74
Total.....	34,159.59	38,412.67	40,483.53

## "Indian Schools, Five Civilized Tribes"

Education:	Fiscal Year	Aid of common schools
	1911.....	289.11
	1913.....	8,412.83
	1914.....	6,749.57
	1915.....	6,611.10
	1916.....	3,759.11
	1917.....	4,738.70
	1918.....	5,258.62
	1919.....	3,715.66
	1920.....	4,005.90
	1921.....	3,550.39
	1922.....	2,300.84
	1923.....	816.48
	1924.....	581.92
	1925.....	512.34
	1927.....	689.98
	1928.....	780.10
	1929.....	1,559.86
	1930.....	3,214.40
	1931.....	5,804.37
	1932.....	9,930.50
	1933.....	11,411.86
	1934.....	11,065.20
Total.....		\$95,758.84

[fol. 91]



Memorandum of P. S. Garber, Chief Education Division,  
Office of Indian Affairs to Mr. Dawson, Land Division,  
Dated September 18, 1917

"During the fiscal year 1917 there was expended approximately \$24,000.00 from 'Interest on Seminole School Fund' in support of the Mckusukey Academy.

"This school had a total enrollment of one hundred and forty-one pupils, with three teachers and thirteen other employees.

"While the Superintendent reports that public school privileges are within reach of almost every pupil in the school, the enrollment is largely made up of full-bloods, a large percentage of whom are orphans.

"This school is co-educational.

"It is believed that the Mekusukey Academy will fill a useful place for several years to come."

Reports of Enrollment by Nations or Tribes in the Cherokee Orphan Training School, Talequah, Oklahoma, from 1912-1934, inclusive, show no Seminole Indians in attendance therein.

Extract from Letter of John Chupeco, Chief of the Seminole Nation, and Fus Hachee, Second Chief, to the Commissioner of Indian Affairs, Dated March 12, 1872.

"... When the Treaty of 1866 was made we were promised that our country would be surveyed that fall. We arrived here during the fall and winter of 1866. No survey having been made our Agent instructed us where to locate and we did as directed. Superintendent Byers visited us during February of 1867 told us that we were now at our home and to make all the improvement we could. Col. Wortham the next incumbent visited us in Dec. 1867 and while here gave us every assurance we could ask that we would be by the Department of Ind. Affs protected in whatever improvement we would make. In the Spring of 1868 a survey of this country was made and we were shown our boundary lines and the majority of the Seminoles who had located outside of our boundaries left their places and moved within our lines taking and improving the places where they now live. Our friends the Creeks former owners of this country complained of the survey saying it was unjust and incorrect as it threw the dividing line of the Creek Nation too far East. As this complaint if true was of

momentous interest to us we asked Superintendent L. M. Robinson who next visited us. He told us that the survey was made probably right and for us to go on and make all the advancement we could. That in any event we would not be interfered with. That we could consider this our own home and that we would not be moved from here. We are informed by our delegates who attended and represented us at the General Council of Dec. 1870 that Col. E. S. Parker then Com. Ind. Affairs told them that no survey of this country had as yet been approved by the Department and to tell the Seminoles not to be in any way alarmed for in the event of the first survey being wrong the Seminoles should not be interfered with, that if this country should prove to belong [fol. 92] to the Creeks they would be given other unoccupied land instead thereof, and said the Creeks have already agreed to this. We have made such improvements as we could expending all that the Government has given us as well as what we may have had of our own for we have been assured by everyone that we have asked authorized as we thought to speak for the Government, of substantially the same thing, viz, that we should not be interfered with, and we have diligently sought information from every source. Our farms that we have made would not compare favorably with those of white men in the states we know still they are very important to us. As we gain our food and shelter from them and common as they may be they are all important to us. Many of our people are old and infirm unable if deprived of their present to make new homes. The Seminoles during the years of their civilization have been continually moved about from place until we are heartily tired of moving, and if moved from here after the repeated assurances we have had of security and protection we fear many would become discouraged and lo-the to begin anew. We are informed by the Creeks that according to the new survey by virtue of late written documents from the Department they are now in possession of their entire country of which this is a part and that we the Seminoles can only remain here by becoming subject to their laws a condition of things we are in no wise willing to agree to. We respectfully call your attention to an enclosed letter marked "A" which we received from No cas yarholor who is Judge of the nearest adjacent District of the Creek Nation. We have answered this letter or the latter part of it by informing him that we did not locate here in this part of the country of our own

accord but in compliance with instructions from our Agent and that until we should receive direct information from the proper authority of the U. S. we would continue to enforce our own laws over this country. We would respectfully ask an answer to this so that we may know what we are doing."

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[fol. 93] ORDER SETTLING THE RECORD—July 18, 1941

The plaintiff having filed a petition for writ of certiorari to the Supreme Court in the above styled case, and having requested that those certain portions of the evidence which are attached hereto be included in the record to be certified to the Supreme Court, and the parties having agreed and the court having found that they are an accurate transcript of the portions of the original record material to the errors assigned, the same are this 18th day of July, 1941, hereby settled and approved as the portions of the evidence to be included in the record to be certified to the Supreme Court.

By the Court: Richard S. Whaley, Chief Justice.

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[fol. 94] Clerk's Certificate to foregoing transcript omitted in printing.

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[fol. 95] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 13, 1941

The petition herein for a writ of certiorari to the Court of Claims is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Jackson took no part in the consideration and decision of this application.

